

Phillip D. Murphy, Governor
Shella Y. Oliver, Lieutenant Governor
Diane Gutierrez-Scaccetti, Commissioner
Kevin S. Corbett, Executive Director

NJ TRANSIT
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May 13, 2019

Dear Governor Murphy:

Pursuant to Chapter 150, Laws of 1979, I herein transmit the minutes of actions taken at the open session of the regularly scheduled meetings of the New Jersey Transit Corporation, NJ TRANSIT Rail Operations, Inc., NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., and NJ TRANSIT Morris, Inc., Board of Directors held on Wednesday, May 8, 2019.

Sincerely,

Original Signed By

Joyce J. Zuczek
Board Secretary

Enclosures

Honorable Philip D. Murphy
Governor, State of New Jersey
State House
Trenton, NJ 08625

Minutes of the actions taken at the Open Session of the regularly scheduled Board of Directors' meetings of the New Jersey Transit Corporation, NJ TRANSIT Rail Operations, Inc., NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., and NJ TRANSIT Morris, Inc. held at NJ TRANSIT Headquarters, One Penn Plaza East, Newark, New Jersey on Wednesday, May 8, 2019.

Board Members Present

Diane Gutierrez-Scaccetti, Chair
Edmund Caulfield, Governor's Representative
Dini Ajmani, Treasurer's Representative
Flora M. Castillo, Board Member

Board Members Absent

Raymond W. Greaves, Board Member (Non-Voting)

Staff Present

Kevin S. Corbett, Executive Director
Joyce J. Zuczek, Board Secretary
Jonathan B. Peitz, Deputy Attorney General
Ronald E. Nichols, Chief, Light Rail and Contract Services
Eric R. Daleo, Assistant Executive Director, Capital Planning and Programs
William Viqueira, Chief Financial Officer and Treasurer
Jignasa D. Desai-McCleary, Chief, Procurement and Support Services

Chair Gutierrez-Scaccetti convened the Open Session at 6:00 p.m. in accordance with the Open Public Meetings Act. Elmira Buongiorno, Office of System Safety, provided a public safety announcement. The pledge of allegiance to the flag was conducted and Board Secretary Zuczek conducted a roll call, noting Board Member Ajmani and Board Member Greaves would be joining the meetings shortly.

Chair Gutierrez-Scaccetti announced Board Member Greaves would not be able to join the meetings because last night the International President of the Amalgamated Transit Union, Larry Hanley passed away. Chair Gutierrez-Scaccetti offered their condolences to Mr. Hanley's family and his Amalgamated Transit Union family as well.

Board Secretary Zuczek announced that adequate notice of the regularly scheduled meetings of the Board of Directors of the New Jersey Transit Corporation, NJ TRANSIT Rail Operations Inc., NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., and NJ TRANSIT Morris, Inc. was provided in accordance with the Open Public Meetings Act and Public Law 2018, Chapter 162, and the meetings were occurring concurrently. Notices were filed on May 3, 2019 with the Secretary of State. These notices were sent to newspapers of general distribution, posted in the main entrance of NJ TRANSIT headquarters, published on the corporation's website, and sent to each individual, agency

and organization that requested such notice. The meetings were viewable on the corporation's website in real time and were video recorded, archived, and made available to the public. Minutes will also be archived and published on the corporation's website.

Executive Session Authorization

At approximately 6:04 p.m., Chair Gutierrez-Scaccetti requested a motion to enter Executive Session to discuss personnel matters, contract negotiations, the status of pending and anticipated litigation, and matters falling within the attorney-client privilege. Board Member Flora M. Castillo moved the resolution, Board Member Edmund Caulfield seconded the motion, and it was unanimously adopted.

Return to Open Session

Board Secretary Zuczek conducted a Roll Call as Board Members returned to Open Session. All Board Members returned to Open Session at approximately 6:32 p.m.

Approval of Minutes

Chair Gutierrez-Scaccetti asked for a motion to approve the minutes of the April 10, 2019 Board meetings. A motion was made by Board Member Edmund Caulfield, seconded by Board Member Flora M. Castillo, and it was unanimously adopted.

Executive Director's Monthly Report

Executive Director Corbett offered NJ TRANSIT's condolences to the family and friends of Larry Hanley, the International President of the Amalgamated Transit Union. He noted management and labor have different roles to play but they are all on the same team and one family, and Larry has been a key player on this team for years. NJ TRANSIT shares their thoughts and prayers with his loved ones.

Last Thursday, NJ TRANSIT announced the service impacts resulting from the upcoming Amtrak renewal work at Penn Station New York beginning in June. He said making service adjustments, especially at Penn Station New York, is never easy.

In terms of magnitude, compared to two summers ago when NJ TRANSIT diverted a total of 70 trains to and from Hoboken Terminal in 2017, this summer, NJ TRANSIT will divert just 10 trains. He said if you are a customer on one of those 10 trains, your commute will be impacted, and NJ TRANSIT has taken a number of significant actions to mitigate that impact. NJ TRANSIT developed a comprehensive communications plan, along with a number of alternate travel and fare options to keep customers moving as seamlessly as possible this summer.

Beginning June 17, 2019 and continuing through September 6, 2019, it is necessary to divert select Penn Station New York (PSNY) trains to and from Hoboken to accommodate Amtrak's work schedule. This includes four Montclair-Boonton Midtown Direct trains and

one North Jersey Coast Line train in each direction during the morning and evening rush hours. There will be select Morris and Essex Line Midtown Direct, referred to as reverse-commuter trains, which originate at PSNY in the mornings that will instead originate in Hoboken.

During morning and afternoon peak hours, Morris and Essex (M&E) Midtown Direct trains will not stop at Newark Broad Street. This is being done as a safety precaution to prevent potentially unsafe crowding conditions on the platforms at Newark Broad Street from customers attempting to transfer from the Montclair-Boonton Line to a Midtown Direct train at Newark. Customers on the Montclair-Boonton Line who will be diverted to Hoboken will have PATH and ferry options available to continue travel into New York.

NJ TRANSIT will be making fare adjustments on the Montclair-Boonton line to offset the cost of PATH and ferry travel. The bottom line is NJ TRANSIT wants to assure the Montclair-Boonton Line customers that it will not cost them any more to travel to New York by utilizing Hoboken and then PATH or ferry option than it does today.

All of the information on impacted trains, alternate service options and ticketing and fares is available at njtransit.com/inform. They encourage all customers to visit the site to make their plans.

Executive Director Corbett said alerts have been going out to customers through the mobile app and its push notification feature as well as through email and text via the MyTransit alert system. They have been engaging with customers across all their social media platforms. They will have posters and signage up at stations. Announcements will be made on-board trains and on platforms throughout the alternate service period.

They will also have customer service ambassadors out at key stations leading up to June 17, 2019 and the days following talking with customers and answering questions starting June 3, 2019. In addition, they will have several information sessions to gather feedback and give customers an opportunity to ask questions of the executive staff.

To further engage with affected customers, Executive Director Corbett, along with members of NJ TRANSIT's senior and executive staff, rode Montclair-Boonton Line train 6263, one of the affected trains, to share information with customers and listen to their feedback. The reception from customers was overwhelmingly positive and it is something they plan to continue over the next several weeks. Their goal is for every customer to know their travel plan and their ticket options, so they may seamlessly continue their daily commute.

Executive Director Corbett said Sunday, May 12, 2019 marks the return of the Atlantic City Rail Line and the Princeton Branch rail service. Executive Director Corbett will be in Philadelphia Sunday morning to officially re-open the Atlantic City Rail Line by riding with customers on the first train traveling to Atlantic City.

Executive Director Corbett thanked all of their customers on these two critical rail lines for their patience as they ramped up the Positive Train Control installation to meet the 2018 federal milestone and qualify for the alternative schedule. Executive Director Corbett was pleased they were able to restore these lines two weeks ahead of the projected date.

These service restorations were just part of their efforts to return NJ TRANSIT to the gold standard of public transportation. As part of that effort, they are also committed to hiring the best, most qualified engineers and training them to be the most skilled.

Executive Director Corbett was honored to be joined by Governor Murphy on Monday, May 6, 2019 as they celebrated the graduation from the classroom of 12 trainees who are poised to soon become full-fledged engineers. These trainees endured 78 weeks of training designed to make them the “best-of-the best” and after meeting them Executive Director Corbett can say they truly are on that path. He said all that is left is their final individual check rides on the rails, and these 12 will become full-time NJ TRANSIT engineers.

Executive Director Corbett said NJ TRANSIT is running seven concurrent classes right now and will be graduating students from four classes this year alone. Moving forward, they will run a sufficient number of classes to operate the safe, on-time service customers expect and deserve without overtaxing the existing workforce.

This past month, Executive Director Corbett was pleased to introduce NJ TRANSIT’s Customer Advocate and Chief Customer Experience Officer Stewart Mader. The position is dedicated to monitoring and improving the customer experience statewide at every customer touchpoint. They look forward to tapping into his wealth of experience advocating for mass transit as the chair of the PATH Riders Council, to maintain their focus on the customer.

Executive Director Corbett said Mr. Mader hit the ground running, which is why he was not at the board meeting. Mr. Mader was out riding train 6273 speaking with customers and answering questions. Train 6273 is one of the Montclair-Boonton Line trains that will be impacted by the Amtrak work this summer. Executive Director Corbett said that he, Mr. Mader and other senior staff members, will be out riding affected trains over the next few weeks. They look forward to getting the word out.

In addition, Executive Director Corbett said he, Mr. Mader and other senior staff members will be available at the upcoming information sessions and he is sure there will be many people speaking with Mr. Mader in the days ahead to assist in his mission to improve the customer experience.

During the month of May, NJ TRANSIT is accepting public comments on their recently announced goal for Disadvantaged Business Enterprise contracting opportunities. Their three-year DBE goal for federal fiscal years 2020 through 2022 is 21.87 percent. As part of the formalization and development of these goals, they are encouraging the public to provide feedback.

Executive Director Corbett said ensuring that their contracting processes are open to small businesses and disadvantaged business entrepreneurs is a vital part of their success and key to expanding a competitive marketplace which NJ TRANSIT will benefit from. Executive Director Corbett was proud that NJ TRANSIT is a leader in providing these opportunities, and they intend to continue raising our goals over the coming fiscal years. Information for providing public comments is on our website at njtransit.com/DBEgoal.

Executive Director Corbett said, on Friday, May 4, 2019, NJ TRANSIT's three participants in the Leadership Exchange and Development (LEAD) Program completed their 18-month curriculum which culminated in Boston. The LEAD Program is a multi-agency leadership development program designed to share best practices and ideas within the transportation industry. Over the span of the past year-and-a-half, the program participants rotated through each agency to meet with, and learn from, Chief Executive Officers, Presidents, senior executives and their respective counterparts from transit agencies across the Northeast.

Executive Director Corbett congratulated Gerard Bocchino, Deputy General Manager for Bus Operations Support; Jeremy Colangelo-Bryan, Chief Planner; and Anthony Grieco, Assistant Executive Director of Communications and Customer Service. The knowledge and experience they have acquired through this journey will be invaluable to their already impressive careers at NJ TRANSIT.

Executive Director Corbett said they are off to the races at Monmouth Park racetrack for another exciting season of horse racing. The rail service to the park kicked off this past weekend for opening day and will operate through October 2019 on race days. Customers can save money by purchasing NJ TRANSIT's racetrack package which includes admission to the grandstand, an official program and rail transportation. It is always a sign that summer is approaching when the track opens, and the horses come out to race.

Executive Director Corbett said the dedication, compassion and care that NJ TRANSIT employees show never ceases to amaze him. He asked Bus Operator Mr. Ruben Valle to join him to present a Proclamation to him recognizing his bravery and heroic efforts by assisting a pedestrian he saw struck by a car.

In addition to care and compassion, NJ TRANSIT employees also display loyalty. Executive Director Corbett said Mr. Luis Trujillo distinguished career spans 60 years, predating NJ TRANSIT back to its predecessor. Executive Director Corbett asked Mr. Trujillo to join him in the front so he could present an Expression of Appreciation for his outstanding achievements and personal dedication to NJ TRANSIT.

Chair Gutierrez-Scaccetti noted it was always wonderful to be able to recognize the good service of their young and more experienced employees.

Public Comments

There were 11 speakers. Board Secretary Zuczek announced in order to give everyone an opportunity to be heard, public comments would be limited to five minutes, and if there were several people speaking on the same topic, two speakers would have five minutes, and all others would have two minutes.

Steven Thorpe thanked staff for taking care of the lighting issue he mentioned at the last Board meeting, and said it was much easier now to see the monitors when a presentation is being given. He said he was blessed to be at a street naming ceremony in Paterson on Saturday in honor of Mr. Russell Graddy. Mr. Thorpe said the City of Paterson recognized him for all the dedication and work he has done for the city and with the people. Mr. Thorpe said the Mayor of Paterson, Congressman Pascrell, and other legislators were at the ceremony and it was good to see Mr. Graddy get this honor he so richly deserves. He asked NJ TRANSIT to keep Mr. Graddy at the top of its list and do something to make things right for him.

Mr. Thorpe spoke about the schedule changes Executive Director Corbett mentioned. Mr. Thorpe said there were 17 trains cancelled in 2017, and again this applied to the Montclair-Boonton and Raritan Valley lines. He believes there needs to be some trading with the Northeast Corridor Line. Mr. Thorpe said it may take some work but urged NJ TRANSIT to have the scheduling people sit down and move some trains around, so the Montclair-Boonton and Raritan Valley line trains can go into Penn Station. He volunteered to come in to discuss these scheduling issues and believes there has to be a way to get more trains on the Montclair-Boonton and Raritan Valley Line timetables. Mr. Thorpe noted the Montclair-Boonton Line was losing four of their trains and they cannot transfer at Broad Street because of safety concerns so their mobility is limited. He asked NJ TRANSIT to give this greater consideration and examine the schedules to see what can be done. Mr. Thorpe believes this would make people very happy.

Sally Gellert, Communications Director of the Lackawanna Coalition, was very pleased to see the City of Paterson naming a street after Mr. Graddy. She believes it was clearly well deserved after hearing month after month of the contributions he has made to Paterson and New Jersey. The Lackawanna Coalition hopes the Board will recognize Mr. Graddy appropriately as well, so his life returns to normal and his supporters do not have to make a monthly trip asking NJ TRANSIT to repair this long-standing miscarriage of injustice.

Ms. Gellert said they welcome Stewart Mader as Customer Advocate and Chief Customer Experience Officer although they object to the title of Customer Advocate which seems to trivialize decades of work of genuine passenger advocates such as the Raritan Valley Rail Coalition, New Jersey Association of Rail Passengers and Lackawanna Coalition. Ms. Gellert said truly advocating for customers from within an organization is awkward at best and they hope he will come to understand their constituents needs. She said they have long argued about the culture of secrecy at NJ TRANSIT and this is also a concern because Mr. Mader's PATH Riders Council which has also been less than transparent. They still want

to be a partner and not just a critic and look forward to participating in a collaborative rider's advisory council to address their constituents' concerns.

Ms. Gellert said they were glad to see that the Atlantic City Line and the Dinky will be restored, which is a great Mother's Day gift. They believe this restoration of service shows NJ TRANSIT can get things done when motivated, even if it is four months past the original date. She complained they have not heard about restoration of any of the individual trains cancelled on other lines and await a date certain they can trust. They also are still looking for weekend service on PATH between Hoboken and the World Trade Center.

The Lackawanna Coalition, along with rail coalition friends Joseph Clift, John Bobsin, and Jack May, reviewed the Amtrak summer schedules and found major problems. Ms. Gellert said NJ TRANSIT train cuts extend to 12 weeks and Amtrak's schedule is nine weeks. They believe NJ TRANSIT threw away the chance to minimize rider discomfort and took the easy way out by diverting the Montclair trains to Hoboken instead of rescheduling the Northeast Corridor and other lines to make room for Montclair-Boonton trains every 40-minutes. They also believe this will make it harder for passengers on the Morris and Essex lines to reach Newark, which they believe is not acceptable and NJ TRANSIT must do better. She said their goal should be to minimize rider discomfort not to make their scheduling job easier.

Ms. Gellert said they were also calling for reduced fare structures and assistance for seniors in obtaining PATH reduced fare cards. She said if PATH accepted senior metro cards as it does full fare cards, this problem could be resolved. She suggested now that Mr. Mader is on the NJ TRANSIT side, he can make things easier.

Ms. Gellert wants NJ TRANSIT to look into website technology because readers are often referred to another page without a hotlink, which she believes is an easy fix. They support the purchase of electric buses to limit the use of fossil fuel because it cleans their air and mitigates climate control.

Bruce Bergen, Chairman of the Raritan Valley Rail Coalition, advised that the Regional Planning Association has forwarded a letter to the Governor and the Legislature urging them to increase NJ TRANSIT's budget in the upcoming cycle and the Raritan Valley Rail Coalition has joined in this letter along with other public groups. He hopes they will see more money funneled into NJ TRANSIT's budget, so they can continue the progress they have been making.

Mr. Bergen presented a petition that has been signed by supporters of the Raritan Valley Rail Coalition. At this point they have almost 3,400 followers on their Facebook page, 580 Twitter followers, and their website has had over 2,300 views. He said they have the support of residents within the four counties serviced by the Raritan Valley Line. They posted a petition on their website and at a public meeting and received 94 physical handwritten petitions as well as 153 petitions completed online. Mr. Bergen read the conclusion of the petition which states: "We the people who use the Raritan Valley Line urge NJ TRANSIT to do the right thing for the 1.7 million residents spanning four counties in municipalities from Union to High Bridge to bring a full-time one-seat ride to our commuters."

Mr. Bergen ended with his pitch on the return of the Raritan Valley one-seat ride, now that the Amtrak summer schedule has been finalized and the first engineering class has graduated, which were two of the three issues needing to be dealt with before the reinstatement of the limited Raritan Valley one-seat ride. He hopes now that some things are out of the way, they can shortly see the reinstatement of this one-seat ride. He thanked prior speakers for acknowledging the Raritan Valley Rail Coalition. Mr. Bergen said they speak for hundreds and thousands of riders and millions of potential riders within their four counties. He hopes this will press NJ TRANSIT staff to get their limited one-seat ride back as soon as possible. Mr. Bergen also joins the other speakers in suggesting there should be a way, although it may not be easy, to get the Raritan Valley Line some additional rush hour one-seat rides.

Joseph Clift noted a page on the Executive Director's Report which was in black and white and not legible and asked someone look at this report before distributing it. Mr. Clift echoed everyone stating Mr. Graddy deserves the lifetime civil rights service accolade and he hopes they can figure out a way to solve his issue with NJ TRANSIT.

Mr. Clift believes the Customer Advocate and Chief Customer Experience Officer Stewart Mader should be reporting directly to the Board. He believes there is a problem of allegiance having someone that claims to be a customer advocate working within a pyramid of management. Mr. Clift said the MTA has similar types of people reporting to the Board, and asked NJ TRANSIT to consider this in Mr. Mader's case.

Mr. Clift believes if the Long Island Railroad can figure out or mimic Amtrak's seven weeks of outage, he cannot see a single arguable reason that NJ TRANSIT is starting two-weeks early. He does not care what the issue is with management and labor. He said NJ TRANSIT was increasing the pain of the Montclair-Boonton Line.

Mr. Clift said last Thursday a group of representatives from the Transportation and Infrastructure Committee took a tour of the tunnel and had testimony on three issues stated by the Executive Director. He took exception to the claims: 1) they cannot repair the existing tunnels without shutting them down completely since he believes they could at night or on weekends; 2) that the Governor is helpful to NJ TRANSIT, since he believes a one percent increase in the budget does not reflect that; 3) the impression given that once the Hudson Tunnel Project and Portal North Project is done there would be more capacity, since he said that was false and NJ TRANSIT spent \$17 billion and will get no additional trains; and 4) Portal North was ready to be worked on but he thinks it should have been stated it does not qualify for a core capacity grant because it doesn't increase capacity by a 10 percent minimum.

Tim Sevenser, New Jersey Association of Rail Passengers, provided a handout because there are new people on the Board. He wants to know if NJ TRANSIT is going to revisit the 2020 plan, that was outlined by Jeff Warsh under former Governor Christine Todd Whitman, to revive abandoned rail lines. He also provided a handout that shows severe cuts on the Boonton and Morris lines. Mr. Sevenser said the last train from Denville east was 9:02 a.m.,

there were Montclair students that cannot make this train, and the first train to return was 2:24 p.m. He believes first they need to restore the service that was savagely cut under former Governor's Christie and Corzine. He said they have the stations and the track and asked for the service to be added to run the trains.

Mr. Sevenser said Executive Director Corbett knows they need to have Hoboken weekend service on the Morris Line which would make a huge difference to people. He said Matthew Walsh of the New Jersey Association of Rail Passengers has been talking to the Federal Railroad Administration and trying to work with towns on getting the abandoned rail ways back to light rail service. Mr. Sevenser said Mr. Walsh was told after several attempts that they need the North Jersey Planning Authority or NJ TRANSIT to say they need these abandoned rails. Mr. Sevenser said if they want to include trails this would be great also.

Mr. Sevenser said Mount Tabor was having its 150th Anniversary the first weekend in August and their Children's Day Celebration. They would like NJ TRANSIT to stop every train at Mount Tabor. He believes this would cost nothing. Mr. Sevenser said they have way too many cars coming in which is dangerous for the kids that are participating in various events. He asked NJ TRANSIT to send out a notice that all trains will be stopping at Mount Tabor, so no one has to drive.

Will Guzman is from Jersey City and often rides on the number 87 bus as well as the PATH and the number 33 and 10 bus in Newark. He said at the end of April, his wife purchased two monthly bus passes without speaking to him and he also purchased two. This past Sunday morning, he said he attempted to get a refund for two passes and approached the ticket agent at Penn Station's Customer Service window but this was not possible. Mr. Guzman said he proceeded to a ticket agent around the corner and they said it was possible and gave him a form to fill out and it would take four-six weeks before he would receive the refund. He said he went back to the first ticket agent in customer service and asked if there was a manager or supervisor that he could speak to and the person began to get irritated and rude and said there was not one available. Mr. Guzman said he asked the ticket agent his name, but the ticket agent refused.

Mr. Guzman said he was writing a book on Raymond Brown and often visits him in Montclair. He sees a very stark contrast from the customer service he receives in that area. Mr. Guzman said the bus drivers on the number 87 line, which serve predominately African American clientele, are very rude but the bus drivers who service Montclair go out of their way to be kind. He said what he experienced on Sunday at 11:25 a.m. was a continuation of this very stark contrast as it relates to customer service. He was so irritated when he left Penn Station on Sunday that he went on the internet to see what he could do to get involved. Mr. Guzman asked who the customer service manager was and who he talks to articulate his concerns regarding customer service and people being rude and curt. He would also like to know how he can be nominated as a Board Member. According to his research, two of the stipulations were that he could not have given a campaign donation and must ride the NJ TRANSIT system, both of which he has done so he thinks he is eligible. Mr. Guzman did not know where to go so he would like to talk to Kevin Corbett about the poor customer service.

Chair Gutierrez-Scaccetti apologized to Mr. Guzman for the lack of customer service he received. She said Justin Davis and Anthony Grieco are in the back of the room and can help him with his issue. Also, she said Mr. Guzman is welcome to speak to Executive Director Corbett, but Mr. Davis and Mr. Grieco will ensure his issue gets resolved.

Errol Kerr thought they would have received a positive word from NJ TRANSIT regarding the unfinished business of justice for Mr. Graddy. They have been coming there for over two years and represent one single issue, justice for Mr. G. He said it would be more comforting for him to talk about ridership or engineers. Mr. Kerr said they were talking about an issue that can easily be resolved.

Mr. Kerr said Mr. Graddy was railroaded out of his business and for 15 years he has been fighting with NJ TRANSIT to get some type of justice which has eluded him. When they speak every month, he said they were not attacking the Board, but they will continue to come month after month until this issue is resolved.

Donna Ivy did not think they were going to be there again and said bye last month. She knows they are close. Ms. Ivy noted Mr. Graddy's street naming event the past weekend was phenomenal, and people came from all over to celebrate him. She knows they appreciate Mr. Graddy and want to do what is in the best interest for NJ TRANSIT and Mr. Graddy. They appreciate Mr. Graddy and honor him and believe he is a wonderful resident, friend, and citizen of Paterson and the State of New Jersey. She said Mr. Graddy has a heart, takes care of the people, and they need to take care of him. They cannot make him whole again, but they can do something that is in the best interest for him and his family. Ms. Ivy appreciates everyone on the Board because this is tough place to be in but wants them to remember the tough place that Mr. Graddy has been in for 15 years. She said if this was one of their family members, they would want the same justice.

Princess Reeves had the pleasure to be in the presence of Mr. Graddy as a gift was bestowed upon him; a street was named after him in Paterson. She said this will go down in history in remembrance of Mr. Graddy. that will last over the years to come. She spoke before about Mr. Graddy and has talked about his history and all the litigation. Ms. Reeves asked that their icon be bestowed with another gift, by making Mr. Graddy whole again.

Janet McDaniels said her intent was not to be controversial but she thought of Harper Lee's book "*To Kill a Mockingbird*" which covered a lot of territory including race and injustice. Ms. McDaniels said during the 60's justice for a black man was just not heard of. She mentioned Dr. Martin Luther King Jr.'s statement that the measure of a man is not where he or she stands in times of controversy, but where they stand when making a decision. Ms. McDaniels said the Board, as a group and not as an individual, have to make difficult decisions. She asked the Board to give Mr. Graddy. some sense of wholeness. Ms. McDaniels said they cannot go back 15 years, but they can make sure what they do today is something close to justice. She reminded them that injustice anywhere is a threat to justice everywhere.

Russell Graddy said he is sure NJ TRANSIT is sick of their group coming to the board meetings and they are sick of coming to the board meetings as well. He thanked the Lackawanna Coalition, Mr. Thorpe, and his people for supporting his cause. Mr. Graddy knows the Board has been placed in a terrible position because they had absolutely nothing to do with the decisions that were made back in 2004, but the decision was made. After all these years have passed, he has never given up for a minute feeling that somewhere justice was going to be served. Mr. Graddy said he was not a person who asks for something for nothing, but he asks for what is right and just. He believes if they go back and review all the information, they will see both sides of the story of what happened back in 2004. Mr. Graddy said the people running NJ TRANSIT at that time were not good, just, or fair. He said he was not asking for any gifts or compassion, but simply fairness and a level playing ground.

Mr. Graddy said he had a lease with NJ TRANSIT, but they never wanted him there and he had to fight all types of obstacles to be able to operate in the bus station, but he fought and won. He was still fighting and still has hope. Mr. Graddy said the wonderful group that has been supporting him all this time come month after month leaving their homes and children to support him because they believe in justice.

Mr. Graddy noted there were negotiations going on, but they will not understand until they look at what happened and see the damage that was done to him and his family financially, physically, and mentally. He asked if they could imagine that because of who they are or the color of their skin that they were treated like someone who is inhuman. Mr. Graddy asked for a decision that is reasonable and something he can live with. If not, he will continue coming to the board meetings.

Advisory Committee Report

Suzanne Mack provided the Advisory Committee Report. The Committee was on a bi-monthly schedule, so their last monthly report covered their April meeting held in Atlantic City. She was there after speaking with many of the Advisory Committee Members to continue with their report card. They were very pleased to see more progress on items the Governor has asked for and demanded accountability on when the strategic plan was done, which was to be more responsible to the riders. The actions taken this month include having the engineering class graduates, which was a vital part of the strategic plan, and the implementation and completion of Positive Train Control. She said now that they have the engineers back, they can run trains which is very important to their customers. She also said hiring the Customer Advocate and Chief Customer Experience Officer, Stewart Mader was an important part of the strategic plan and she was sorry she did not get the chance to meet him that night. She listened to other advocates and thinks having these various views will help Mr. Mader when he is not riding the trains. She hopes Mr. Mader will become a person in this organization who will take the complaints and raise these issues to the Board as it relates to the advocacy groups. She said the advocacy groups that have been coming there have good suggestions and she believes they are listened to and hopes they feel they are.

Ms. Mack said the corporate culture at NJ TRANSIT is changing, and with Board Member Castillo being the longest standing Board member she can attest that even though there were ups and downs in the past, there was never a thought that the employees at NJ TRANSIT were not the best and committed to servicing the customer. The employees have worked under difficult circumstances, therefore seeing people there that have been in the trenches working and responding, some for 60 years, says something. The fact that NJ TRANSIT recognized some of these employees shows respect, change, and welcome in a new corporate culture. As for the speaker with his customer service complaint, Ms. Mack thanked the Commissioner and applauded the fact that the gentleman will get his issue resolved tonight which is how most things are handled when coming to a Board meeting. There were others who did this type of thing back in the day.

Another important issue was the reinstatement of the Raritan Valley one-seat ride. If her co-chair Ron were there he would be talking about this. Ms. Mack pointed out an advisory alert on an event anticipating having 8,000-10,000 people coming into the Meadowlands on May 18th and 19th. She asked if there was a way to get information out on the NJ TRANSIT website on their expectations regarding the number of people that can get on trains after an event. She knows they have improved communication on social media over the last couple of years and Anne Marie Gonnella thought it would be a good idea to get information out to their customers, so they have a better way of managing how they get in and out of the Meadowlands.

Ms. Mack has been doing this for 40 years and thinks the Governor has shown that when his administration says that they want to do a reorganization and they are able to give any increase back to transit is a statement. If there was more money, she was sure the Board was fighting for it and she hopes it comes in. Ms. Mack thinks it is important to realize that transit has become an important part in the culture of New Jersey.

Board Operations and Customer Service Committee Report

Board Member Castillo presented the report for the Operations and Customer Service Committee. The Operations and Customer Service Committee received an update on the operations and customer service trends, analysis, and actions for rail, bus, and light rail. The Committee also received updates on proposed technology investments to improve customer service and communications, system security, TNC pilot efforts, and the asset management program. Additionally, they received updates on social media activities and the ongoing Access Link trends and analysis, as well as the pilot going on with Access Link.

Board Administration Committee Report

Board Member Castillo presented the report for the Administration Committee. The Administration Committee received several updates including a Financial Update on fiscal year and year-over-year operating results, budget-to-actual comparisons of revenue and expenses, and major operating results. In addition, the Committee received an update on headcount, vacancies, and hiring. The update also included a review of major balance

sheet items such as changes in working capital, outstanding debt, and accounts payables. It also included an update on ridership levels and revenue, as well as real estate and economic development highlights. Lastly, they also received updates regarding Human Resources and Equal Employment Opportunity/Affirmative Action.

Capital Planning, Policy, and Privatization Committee Report

Chair Gutierrez-Scaccetti presented the report for the Capital Planning, Policy and Privatization Committee. The Committee discussed the board items for the: Execution of Contract and Extension of Contract for Access Link Service in Burlington, Camden, Cumberland, Gloucester, and Salem Counties; Contract Amendment to Temporarily Operate Bergen County Local Bus Service; NJ TRANSIT Resilience Program: Bay Head Substation Construction and Construction Management Services Contracts; Readoption of N.J.A.C. 16:72 Procurement Policies and Procedures; and Annual Notice of Meetings and Designation of Board Secretary.

Action Items

1905-23: EXECUTION OF CONTRACT 19-002 FOR THE PROVISION OF ACCESS LINK SERVICE IN REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER AND SALEM COUNTIES)

Executive Director Corbett introduced Ronald Nichols, Chief, Light Rail and Contract Services, to present Action Item #1905-23.

Ronald Nichols recommended approval of Action Item #1905-23: Execution of Contract 19-002 For the Provision of Access Link Service in Region 2 (Burlington, Camden, Cumberland, Gloucester and Salem Counties).

Approval was requested to enter into NJ TRANSIT Contract No. 19-002 with Easton Coach Company of Easton, Pennsylvania, and take all other actions necessary to implement and administer the agreement for the provision of Access Link service in Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) service for an initial 32-month base period from October 20, 2019 to June 30, 2022 at a cost of \$47,824,997.00, plus five percent contingencies.

Approval was also requested to exercise the options to extend NJ TRANSIT Contract No. 19-002 for an additional two option periods in accordance with the Request for Proposal and the carriers proposal, at a cost not to exceed \$40,058,296.00, for the first option period of 24 months, and \$37,993,845.00 for the second option period of 20 months, plus five percent for contingencies.

Approval of this item will ensure that NJ TRANSIT remains in compliance with its federal obligation to provide the ADA paratransit service to residents and visitors. It will ensure that those who are unable to use NJ TRANSIT's fixed-route local bus service have the opportunity to be independent and increase their community participation.

Mr. Nichols asked for approval of Item #1905-23.

Board Member Flora Castillo made a motion to approve Action Item #1905-23 and Board Member Edmund Caulfield seconded it.

Board Member Castillo asked if there were performance measures included in the contract. She said Region 2 seems to have had a lot of chronic service delays and consistently ranked number two out of the five regions. Mr. Nichols confirmed they have included performance measurements, monitoring their on-time performance, time for trips, and the distance a passenger is in a vehicle from their origin to their destination, and they have monitoring methods for this new contract.

Board Member Castillo asked about vehicle availability, which she believes is a factor as well. Mr. Nichols explained they have ordered to increase the vehicles in Region 2, purchased replacements, and increased the maintenance and monitoring of the vehicle.

Board Member Castillo said she knows they received a good contract amount and asked if the cost per trip would go down for this region. Mr. Nichols confirmed they were looking for it to go down.

The item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-24: EXTENSION OF ACCESS LINK CONTRACT 12-011 FOR THE PROVISION OF CONTRACTED SERVICE FOR REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER AND SALEM COUNTIES)

Executive Director Corbett introduced Ronald Nichols, Chief, Light Rail and Contract Services, to present Action Item #1905-24.

Ronald Nichols recommended approval of Action Item #1905-24: Extension of Access Link Contract 12-011 for the Provision of Contracted Service for Region 2 (Burlington, Camden, Cumberland, Gloucester and Salem Counties).

Approval was requested to extend NJ TRANSIT Contract No. 12-011, the existing agreement with First Transit Inc. of Cincinnati, Ohio, and take all other actions necessary to implement and administer the agreement for the continued operation of Access Link Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) service

for an additional three-month period, from July 13, 2019 through October 19, 2019, at a total cost not to exceed \$4,844,759.00, plus five percent for contingencies.

Approval of this item will ensure uninterrupted Access Link service and that NJ TRANSIT remains in compliance with its federal obligation to provide the ADA paratransit service to residents and visitors. It will ensure that those who are unable to use NJ TRANSIT’s fixed-route local bus service have the opportunity to be independent and increase their community participation.

Mr. Nichols asked for approval of Item #1905-24.

Board Member Edmund Caulfield made a motion to approve Action Item #1905-24, Board Member Flora Castillo seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-25: AMENDMENT TO PASSAIC COUNTY LOCAL BUS SERVICE CONTRACT TO TEMPORARILY OPERATE BERGEN COUNTY LOCAL BUS SERVICE

Executive Director Corbett introduced Ronald Nichols, Chief, Light Rail and Contract Services, to present Action Item #1905-25.

Ronald Nichols recommended approval of Action Item #1905-25: Amendment to Passaic County Local Bus Service Contract to Temporarily Operate Bergen County Local Bus Services.

Approval was requested to take all actions necessary to amend NJ TRANSIT Contract No. 17-001 with Community Transportation Inc., of Paramus, New Jersey, to operate the Bergen County Local Bus Service for a period of 12 months at a cost not to exceed \$7,765,325, plus five percent for contingencies, for a total contract authorization of \$8,153,591.

Saddle River Trails, Inc. provided a formal notice of termination of its contract for the operation of the Bergen County Local Bus service. Continuation of this service is important to riders, and it is consistent with NJ TRANSIT’s mission to provide for the operation of a coherent public transportation system in the most efficient and effective manner.

Community Transportation Inc. has operated the Bergen County Local Bus Service under contract with NJ TRANSIT for the past seven years and is familiar with the routes and service requirements and can immediately take over the operation of the service without

incurring any service disruptions until such time as a Request for Proposal procurement process can be completed.

Mr. Nichols asked for approval of Item #1905-25.

Board Member Flora Castillo made a motion to approve Action Item #1905-25, Board Member Edmund Caulfield seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-26: NJ TRANSIT RESILIENCE PROGRAM: BAY HEAD SUBSTATION CONSTRUCTION CONTRACT AWARD AND CONSTRUCTION MANAGEMENT SERVICES CONTRACT AWARD

Executive Director Corbett introduced Eric Daleo, Assistant Executive Director, Capital Planning and Programs, to present Action Item #1905-26.

Eric Daleo recommended approval of Action Item #1905-26: NJ TRANSIT Resilience Program: Bay Head Substation Construction Contract Award and Construction Management Services Contract Award.

Approval was requested to enter into NJ TRANSIT Contract No. 17-026X with PKF-Mark III, Inc., for construction services for the new Bay Head Substation Project in an amount not to exceed \$20,657,858.61, plus five percent for contingencies.

Approval was also requested to enter into NJ TRANSIT Contract No. 17-008 with T. Y. Lin of Hackettstown, New Jersey, for construction management services for the new Bay Head Substation Project in an amount not to exceed \$3,059,350.52, plus five percent for contingencies.

Approval of this item will allow for replacement of the two existing substations in Bay Head Yard in a resilient manner.

Mr. Daleo asked for approval of Item #1905-26.

Board Member Edmund Caulfield made a motion to approve Action Item #1905-26, Board Member Flora Castillo seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-27: SELECTION OF VENDOR FOR DENTAL PROGRAMS

Executive Director Corbett introduced William Viqueira, Chief Financial Officer and Treasurer, to present Action Item #1905-27.

William Viqueira recommended approval of Action Item #1905-27: Selection of Vendor for Dental Programs.

Approval was requested to enter into NJ TRANSIT Contract No. 17-030R-B with Horizon Blue Cross Blue Shield of New Jersey, for Dental administration and this contract will provide healthcare benefits to active and retired NJ TRANSIT employees and their eligible dependents, beginning July 1, 2019, for a period of three (3) years, with administrative fees not to exceed \$293,000 per year, plus five percent for contingencies, and with two, one-year renewal options.

NJ TRANSIT seeks to achieve cost-effective administration of its health benefits program through a competitive procurement process. On December 12, 2018, the Board approved selection of Cigna Corporation for Dental administration.

NJ TRANSIT has determined that Cigna Corporation is unable to wholly match NJ TRANSIT’s prescribed plan structure, as was required to be considered responsive to the Request for Proposal requirements.

The highest ranked responsive proposer is Horizon Blue Cross Blue Shield of New Jersey for Dental administration.”

Mr. Viqueira asked for approval of Item #1905-27.

Board Member Flora Castillo made a motion to approve Action Item #1905-27, Board Member Edmund Caulfield seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-28: EXTENSION OF DENTAL PROGRAM ADMINISTRATOR CONTRACT

Executive Director Corbett introduced William Viqueira, Chief Financial Officer and Treasurer, to present Action Item #1905-28.

William Viqueira recommended approval of Action Item #1905-28: Extension of Dental Program Administrator Contract.

Approval was requested to extend NJ TRANSIT Contract No. 10-120 with its current dental program administrator, Horizon Blue Cross Blue Shield of New Jersey, for a period of six months or until such time when a new contract for dental program administration can be executed, beginning July 1, 2019, to ensure continuation of coverage for NJ TRANSIT employees, retirees, and eligible dependents, at the current rates not to exceed \$200,000, plus five percent for contingencies.

Approval of this item will ensure the seamless continuation of dental plans for NJ TRANSIT’s active employees and retirees.

Mr. Viqueira asked for approval of Item #1905-28.

Board Member Edmund Caulfield made a motion to approve Action Item #1905-28, Board Member Flora Castillo seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-29: RECOMMENDATION TO APPROVE THE AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018

Executive Director Corbett introduced William Viqueira, Chief Financial Officer and Treasurer, to present Action Item #1905-29.

William Viqueira recommended approval of Action Item #1905-29: Recommendation to Approve the Audited Financial Statements for the Fiscal Year Ended June 30, 2018.

Approval was requested that the Board of Directors accept and approve NJ TRANSIT’s audited financial statements for the fiscal year ended June 30, 2018.

NJ TRANSIT’s former independent auditor, Ernst & Young LLP (E&Y), has completed its examination of NJ TRANSIT’s financial statements for the fiscal year ended June 30, 2018 in compliance with the enabling legislation and requirements of Executive Orders.

Mr. Viqueira asked for approval of Item #1905-29.

Board Member Flora Castillo made a motion to approve Action Item #1905-29, Board Member Edmund Caulfield seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-30: REGULATIONS: READOPTION OF RULES WITH AMENDMENTS: N.J.A.C. 16:72 PROCUREMENT POLICIES AND PROCEDURES

Executive Director Corbett introduced Jignasa Desai-McCleary, Chief, Procurement and Support Services, to present Action Item #1905-30.

Jignasa Desai-McCleary recommended approval of Action Item #1905-30: Regulations: Readoption of Rules with Amendments: N.J.A.C. 16:72 Procurement Policies and Procedures.

Approval was requested to take all actions necessary to adopt the regulations, N.J.A.C. 16:72 et seq., Procurement Policies and Procedures, consistent with this Board item and Exhibit B.

Approval of this item will advance the guidelines and procedures that govern effective and efficient procurement of goods and services in support of statewide transit services by NJ TRANSIT.

Ms. Desai-McCleary asked for approval of Item #1905-30.

Board Member Edmund Caulfield made a motion to approve Action Item #1905-30, Board Member Flora Castillo seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

1905-31: ANNUAL NOTICE OF MEETINGS AND DESIGNATION OF BOARD SECRETARY

Chair Gutierrez-Scaccetti recommended approval of Action Item #1905-31: Annual Notice of Meetings and Designation of Board Secretary. This action item is to adopt the Annual Notice of Meetings for all of the Board of Directors' meetings during Fiscal Year 2020 and to designate Joyce J. Zuczek as Board Secretary of NJ TRANSIT and its subsidiaries.

Board Member Flora Castillo made a motion to approve Action Item #1905-31, Board Member Edmund Caulfield seconded it, and the item was unanimously adopted.

Roll Call Vote:

Gutierrez-Scaccetti	Caulfield	Ajmani	Castillo	Greaves
Yes	Yes	Yes	Yes	Absent (Non-Voting Member)

Adjournment

Since there were no further comments or business, Chair Gutierrez-Scaccetti called for adjournment and a motion to adjourn was made by Board Member Edmund Caulfield, seconded by Board Member Flora M. Castillo, and unanimously adopted. The meetings were adjourned at approximately 8:01 p.m.

NEW JERSEY TRANSIT CORPORATION
NJ TRANSIT BUS OPERATIONS, INC.
NJ TRANSIT RAIL OPERATIONS, INC.
NJ TRANSIT MERCER, INC.
NJ TRANSIT MORRIS, INC.
REGULARLY SCHEDULED BOARD OF DIRECTORS' MEETINGS

MAY 8, 2019

MINUTES

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➤	CALL TO ORDER	-
➤	SAFETY ANNOUNCEMENT	-
➤	PLEDGE OF ALLEGIANCE TO THE FLAG	-
➤	EXECUTIVE SESSION AUTHORIZATION	54527
➤	APPROVAL OF MINUTES OF PREVIOUS MEETINGS	54528
➤	EXECUTIVE DIRECTOR'S MONTHLY REPORT	54529
➤	PUBLIC COMMENTS	-
➤	ADVISORY COMMITTEE REPORT	-
➤	BOARD COMMITTEE REPORT	-

ACTION ITEMS

1905-23	EXECUTION OF CONTRACT 19-002 FOR THE PROVISION OF ACCESS LINK SERVICE IN REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER, AND SALEM COUNTIES) – Authorization to enter into NJ TRANSIT Contract No. 19-002 with Easton Coach Company of Easton, Pennsylvania, and take all other actions necessary to implement and administer the agreement for the provision of Access Link service in Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) service for an initial 32-month base period from October 20, 2019 to June 30, 2022 at a cost of \$47,824,997.00, plus five percent contingencies, subject to the availability of funds and Board approval of NJ TRANSIT's operating budget.	54551
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Authorized to exercise the options to extend NJ TRANSIT Contract No. 19-002 for an additional two option periods in accordance with the Request for Proposal and the carriers proposal, at a cost not to exceed \$40,058,296.00, for the first option period of 24 months, and \$37,993,845.00 for the second option period of 20 months, plus five percent for contingencies, subject to the approval of funds and Board approval of NJ TRANSIT's operating budget.

NEW JERSEY TRANSIT CORPORATION
NJ TRANSIT BUS OPERATIONS, INC.
NJ TRANSIT RAIL OPERATIONS, INC.
NJ TRANSIT MERCER, INC.
NJ TRANSIT MORRIS, INC.
REGULARLY SCHEDULED BOARD OF DIRECTORS' MEETINGS
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- 1905-24 EXTENSION OF CONTRACT 12-011 FOR THE PROVISION OF ACCESS LINK SERVICE FOR REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER, AND SALEM COUNTIES) –** 54555
Authorized to extend NJ TRANSIT Contract No. 12-011, the existing agreement with First Transit Inc. of Cincinnati, Ohio, and take all other actions necessary to implement and administer the agreement for the continued operation of Access Link Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) service for an additional three-month period, from July 13, 2019 through October 19, 2019, at a total cost not to exceed \$4,844,759.00, plus five percent for contingencies, subject to the availability of funds and Board approval of NJ TRANSIT's operating budget.
- 1905-25 AMENDMENT TO PASSAIC COUNTY LOCAL BUS SERVICE CONTRACT TO TEMPORARILY OPERATE BERGEN COUNTY LOCAL BUS SERVICE –** 54556
Authorization to take all actions necessary to amend NJ TRANSIT Contract No. 17-001 with Community Transportation Inc., of Paramus, New Jersey, to operate the Bergen County Local Bus Service for a period of 12 months at a cost not to exceed \$7,765,325, plus five percent for contingencies, for a total contract authorization of \$8,153,591, subject to the availability of funds and board approval of NJ TRANSIT's operating budget.
- 1905-26 NJ TRANSIT RESILIENCE PROGRAM: BAY HEAD SUBSTATION CONSTRUCTION CONTRACT AWARD AND CONSTRUCTION MANAGEMENT SERVICES CONTRACT AWARD –** 54557
Authorization to enter into NJ TRANSIT Contract No. 17-026X with PKF-Mark III, Inc., for providing construction services for the new Bay Head Substation Project in the amount not to exceed \$20,657,858.61, plus five percent for contingencies, subject to the availability of funds.

Authorization to enter into NJ TRANSIT Contract No. 17-008 with T. Y. Lin of Hackettstown, New Jersey, for providing construction management services during construction of the new Bay Head Substation Project in the amount not to exceed \$3,059,350.52, plus five percent for contingencies, subject to the availability of funds.
- 1905-27 SELECTION OF VENDOR FOR DENTAL PROGRAMS –** 54561
Authorization to enter into NJ TRANSIT Contract No. 17-030R-B with Horizon Blue Cross Blue Shield of New Jersey, for Dental administration and this contract will provide healthcare benefits to active and retired NJ TRANSIT employees and their eligible dependents, beginning July 1, 2019, for a period of three (3) years, with administrative fees not to exceed \$293,000 per year, plus five percent for contingencies, and with two, one-year renewal options, subject to the availability of funds.

NEW JERSEY TRANSIT CORPORATION
NJ TRANSIT BUS OPERATIONS, INC.
NJ TRANSIT RAIL OPERATIONS, INC.
NJ TRANSIT MERCER, INC.
NJ TRANSIT MORRIS, INC.
REGULARLY SCHEDULED BOARD OF DIRECTORS' MEETINGS
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- 1905-28 EXTENSION OF DENTAL PROGRAM ADMINISTRATOR CONTRACT – 54562**
Authorization to extend NJ TRANSIT Contract No. 10-120 with its current dental program administrator, Horizon Blue Cross Blue Shield of New Jersey, for a period of six months or until such time when a new contract for dental program administration can be executed, beginning July 1, 2019, to ensure continuation of coverage for NJ TRANSIT employees, retirees, and eligible dependents, at the current rates not to exceed \$200,000, plus five percent for contingencies, subject to the availability of funds.
- 1905-29 RECOMMENDATION TO APPROVE THE AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018 – 54563**
Authorization to accept and approve NJ TRANSIT's audited financial statements for the fiscal year ended June 30, 2018.
- 1905-30 REGULATIONS: READOPTION OF RULES WITH AMENDMENTS: N.J.A.C. 16:72 PROCUREMENT POLICIES AND PROCEDURES – 54564**
Authorization to take all actions necessary to adopt the regulations, N.J.A.C. 16:72 et seq., Procurement Policies and Procedures, consistent with this Board item and Exhibit B.
- 1905-31 ANNUAL NOTICE OF MEETINGS AND DESIGNATION OF BOARD SECRETARY – 54613**
Adopt the Annual Notice of Meetings (Exhibit A) for all of the Board of Directors' meetings during Fiscal Year 2020.

Designate Joyce J. Zuczek as Board Secretary of NJ TRANSIT and its subsidiaries.

➤ **ADJOURNMENT**

EXECUTIVE SESSION AUTHORIZATION

BE IT HEREBY RESOLVED pursuant to N.J.S.A. 10:4-12 and N.J.S.A. 10:4-13 that the Board of Directors of the New Jersey Transit Corporation hold an executive session to discuss personnel matters, contract negotiations, the status of pending and anticipated litigation, and matters falling within the attorney-client privilege; and

BE IT FURTHER RESOLVED that it is expected that discussions undertaken at this executive session could be made public at the conclusion of these matters as appropriate.

APPROVAL OF MINUTES

WHEREAS, the By-Laws provide that the minutes of actions taken at meetings of the New Jersey Transit Corporation, NJ TRANSIT Rail Operations, Inc., NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., and NJ TRANSIT Morris, Inc. Board of Directors be approved by the Board; and

WHEREAS, pursuant to Section 4(f) of the New Jersey Public Transportation Act of 1979, the minutes of actions taken at the April 10, 2019 Board Meetings of the New Jersey Transit Corporation, NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Rail Operations, Inc., NJ TRANSIT Mercer, Inc., and NJ TRANSIT Morris, Inc. were forwarded to the Governor on April 15, 2019;

NOW, THEREFORE, BE IT RESOLVED that the minutes of actions taken at the April 10, 2019 New Jersey Transit Corporation, NJ TRANSIT Rail Operations, Inc., NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., and NJ TRANSIT Morris, Inc. Board of Directors' meetings are hereby approved.

Philip D. Murphy, Governor
Sheila Y. Oliver, Lieutenant Governor
Diane Gutierrez-Scaccetti, Commissioner
Kevin S. Corbett, Executive Director



One Penn Plaza East
Newark, NJ 07105-2246
973-491-7000

TO: BOARD OF DIRECTORS
FROM: KEVIN S. CORBETT 
DATE: MAY 8, 2019
SUBJECT: EXECUTIVE DIRECTOR'S REPORT – MAY 2019

Last Thursday, we announced the service impacts resulting from the upcoming Amtrak renewal work at Penn Station New York (PSNY) beginning in June. Making service adjustments, especially at PSNY, is never easy. In terms of magnitude, we diverted a total of 70 trains to and from Hoboken Terminal in 2017. This summer, we'll be diverting just ten trains. But make no mistake, if you're a customer on one of those ten trains, your commute will be impacted and we've taken a number of significant actions to mitigate that impact.

We have developed a comprehensive communications plan, along with a number of alternate travel and fare options to keep customers moving as seamlessly as possible this summer. Beginning June 17th and continuing through September 6th, it's necessary to divert select PSNY trains to and from Hoboken to accommodate Amtrak's work schedule. This includes four Montclair-Boonton Midtown Direct trains and one North Jersey Coast Line train in each direction during the morning and evening rush hours. There will be select Morris and Essex Line Midtown Direct, what we call reverse-commute trains, which originate at PSNY in the mornings that will instead originate in Hoboken. During morning and afternoon peak hours, M&E Midtown Direct trains will not stop at Newark Broad Street. This is being done as a safety precaution to prevent potentially unsafe crowding conditions on the platforms at Newark Broad Street from customers attempting to transfer to and from New York trains. Customers on the Montclair-Boonton Line who will be diverted to Hoboken will have PATH and ferry options available to continue travel into New York. We will be making fare adjustments on the Montclair-Boonton line to offset the cost of PATH and ferry travel. The bottom line, I want to assure our Montclair-Boonton Line customers that we will be reducing their net fare for travel to New York by utilizing Hoboken and the PATH or ferry option. All of the information on impacted trains, alternate service options, and ticketing and fares is available at njtransit.com/inform.

This coming Sunday will mark the return of the Atlantic City Rail Line (ACRL) and the Princeton Branch rail service. I will be in Philadelphia Sunday morning to officially re-open the ACRL by riding with customers on the first train traveling to Atlantic City. I want to again thank all of our customers on these two critical rail lines for their patience as we ramped up our Positive Train Control installation to meet the 2018 federal milestone and qualify for the alternative schedule. I'm pleased that we are able to restore these lines two weeks ahead of our original projected date.

These service restorations are just part of our efforts to return NJ TRANSIT to the gold standard of public transportation. We are also committed to hiring the best, most qualified engineers and training them to be the most skilled. I was honored to be joined by Governor Murphy on Monday as we celebrated the graduation from the classroom of 12 trainees who are poised to soon become full-fledged engineers. These trainees are enduring 78 weeks of training designed to make them the "best-of-the best." All that's left is their check rides on the rails themselves, and these 12 will become full-time NJ TRANSIT engineers.

This past month, I was pleased to introduce our Customer Advocate and Chief Customer Experience Officer Stewart Mader. The position is dedicated to monitoring and improving the customer experience statewide at every customer touchpoint. We look forward to tapping into his wealth of experience advocating for mass transit as the chair of the PATH Riders Council to maintain our focus on the customer. Over the next several weeks, Stewart, myself and senior staff members will be out riding trains speaking with customers and answering questions.

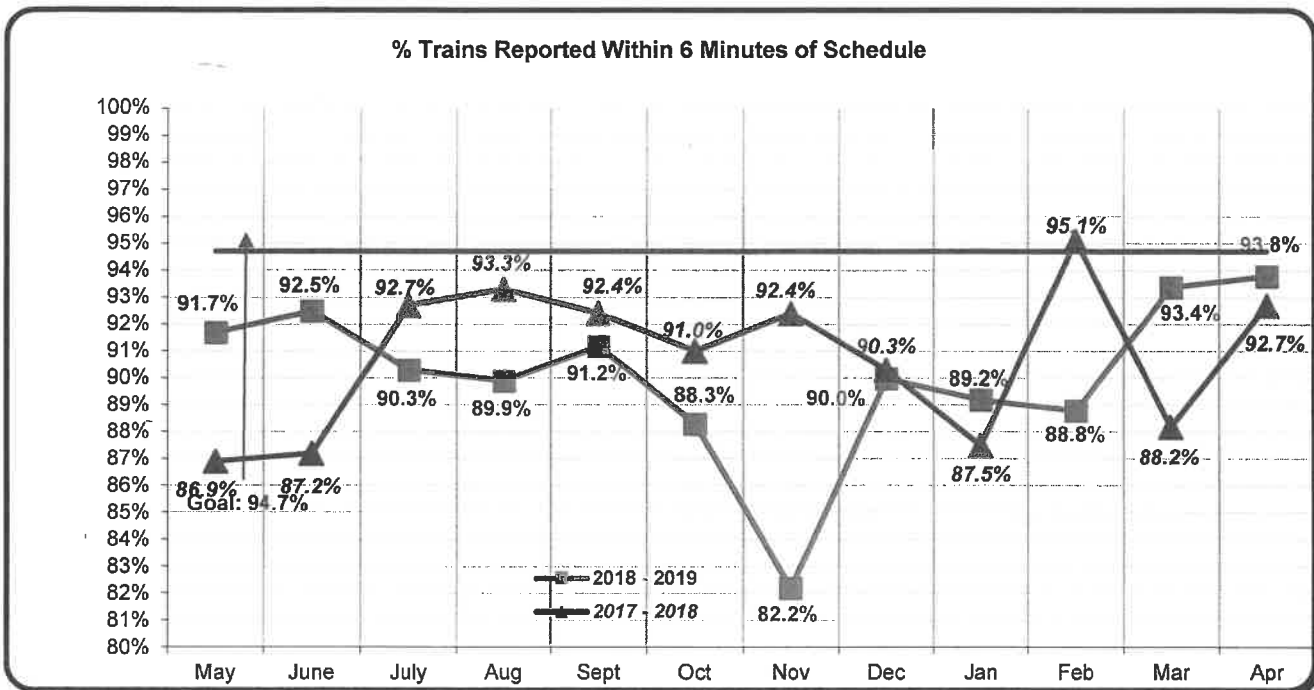
During the month of May, we are accepting public comments on our recently announced goal for Disadvantaged Business Enterprise (DBE) contracting opportunities. Our three-year DBE goal for federal fiscal years 2020 through 2022 is 21.87%. I'm proud that NJ TRANSIT is a leader in providing these opportunities, and we intend to continue raising our goals over the coming fiscal years. Information for providing public comments is on our website at njtransit.com/DBEgoal.

EXECUTIVE DIRECTOR'S MONTHLY REPORT MAY 8, 2019

- 1. PERFORMANCE MEASURES**
- 2. MEAN DISTANCE BETWEEN FAILURES**
- 3. DBE/MBE PROGRAM**
- 4. EMPLOYEE RECOGNITION**

PERFORMANCE MEASURES

NJ TRANSIT ON-TIME PERFORMANCE RAIL MAY 2017 - APRIL 2019



One-Month Comparison	Mar. 2019	Apr. 2019	# Change
	93.4%	93.8%	0.4%
April Comparison	2018	2019	# Change
	92.7%	93.8%	1.1%
12-Month Average May. 2017 - Apr. 2019	2017-2018	2018-2019	# Change
	90.8%	90.1%	-0.7%

Analysis:

Rail On-Time Performance was 93.8% for April, 2019. Of the 16,822 trains scheduled to operate, 15,776 were on time, while 1,046 trains (or 6.2%) were delayed. Key causes included:

- Amtrak switch issues contributed to 6 delays resulting in 89.8% OTP on April 18.
- Amtrak signal issues, NJT diesel issues and manpower shortage contributed to 90 delays resulting in 83.5% OTP on April 26.
- Amtrak switch issues, NJT manpower shortage, bridge strike signal issues, equipment issues and fare dispute contributed to 68 delays resulting in 85.7% OTP on April 29.

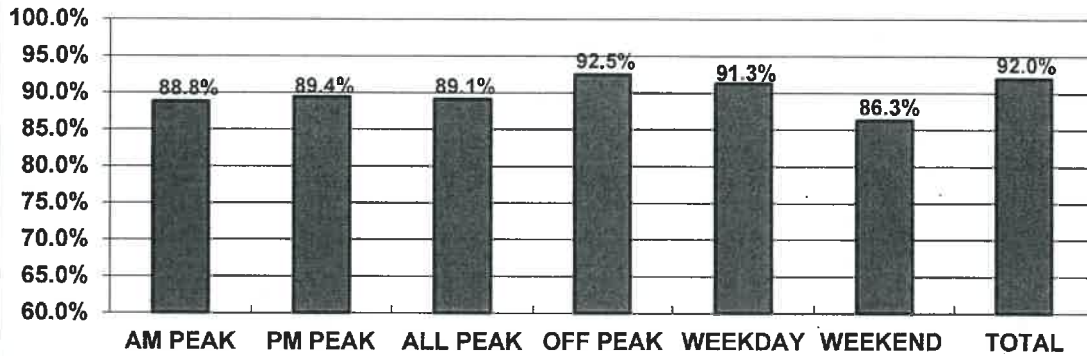
The 12-month average for Rail On-Time Performance May 2018-April 2019 was 90.1%, which decreased by .07%.

ON-TIME PERFORMANCE RAIL

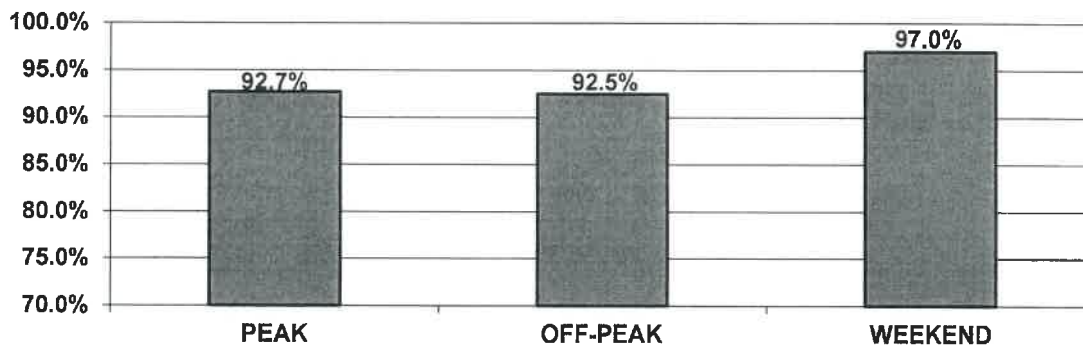
SUMMARY BY TIME PERIOD APRIL, 2019

* NOTE: A train is reported late if it arrives at its final station stop more than 5:59 later than the advertised schedule.

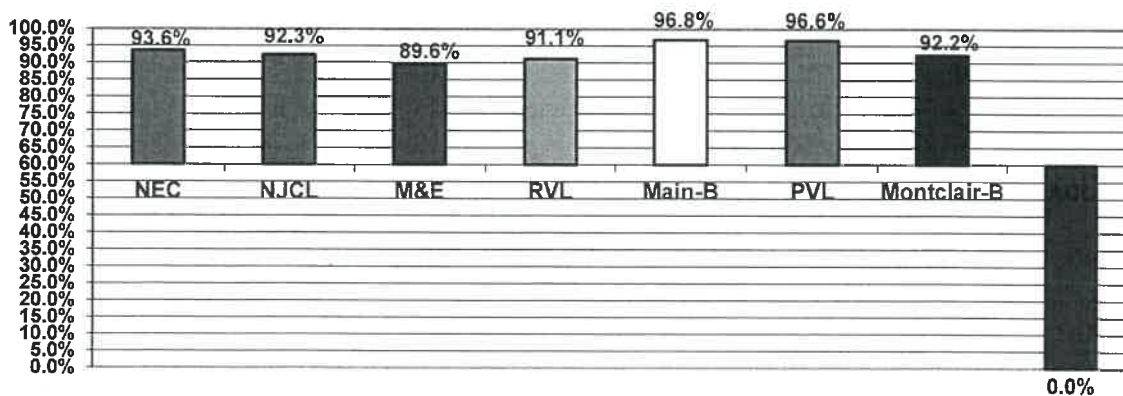
% NEW YORK PENN STATION Trains Reported On Time *



% SYSTEMWIDE Trains Reported On Time

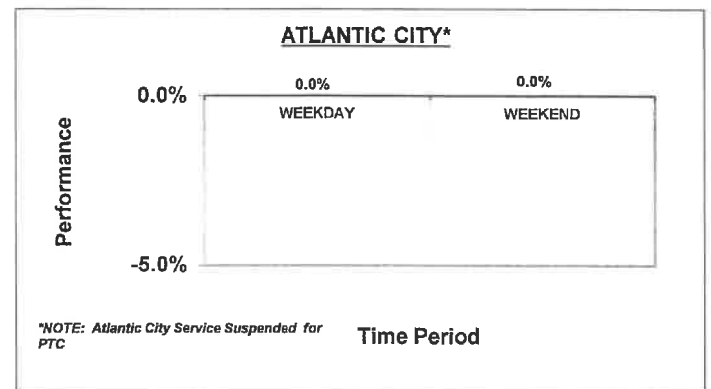
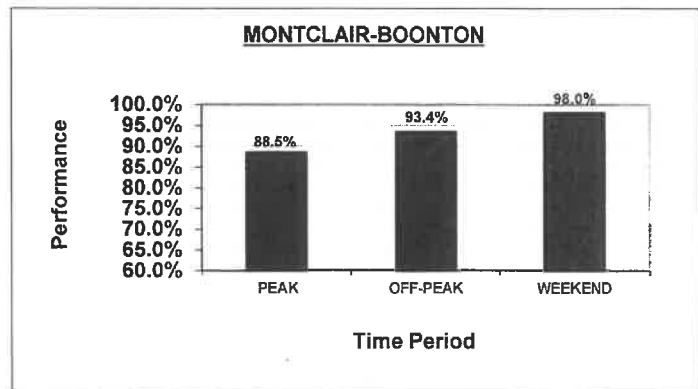
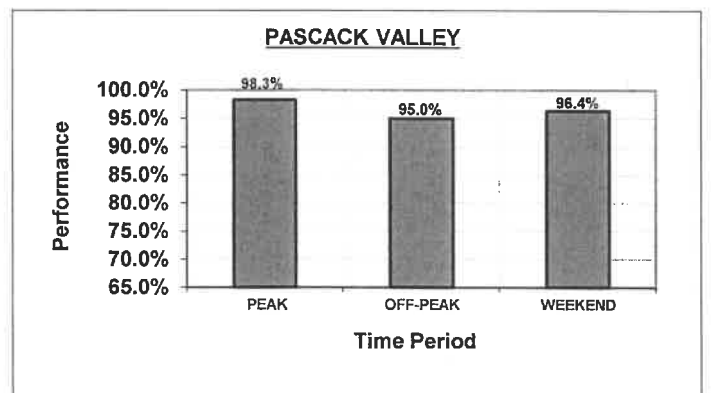
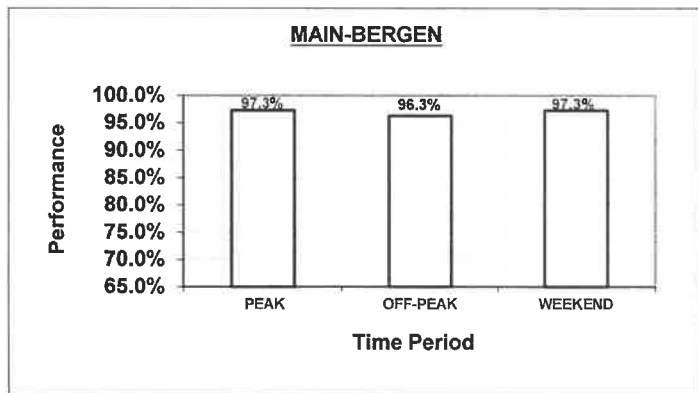
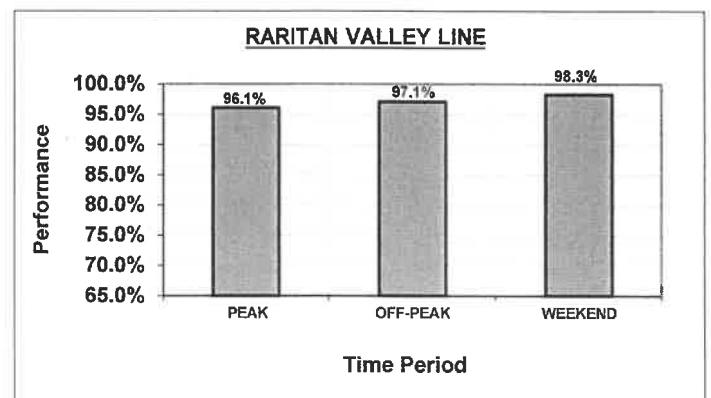
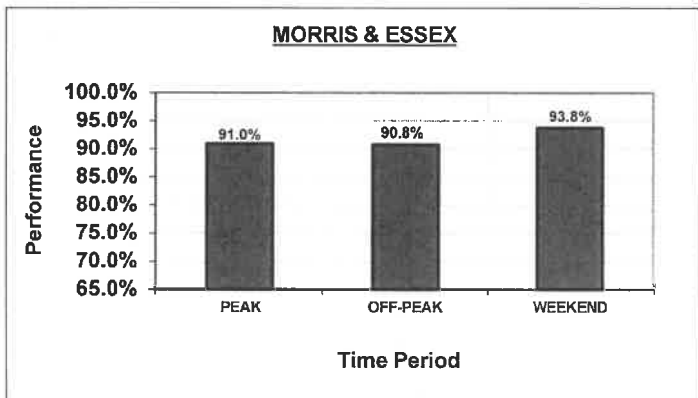
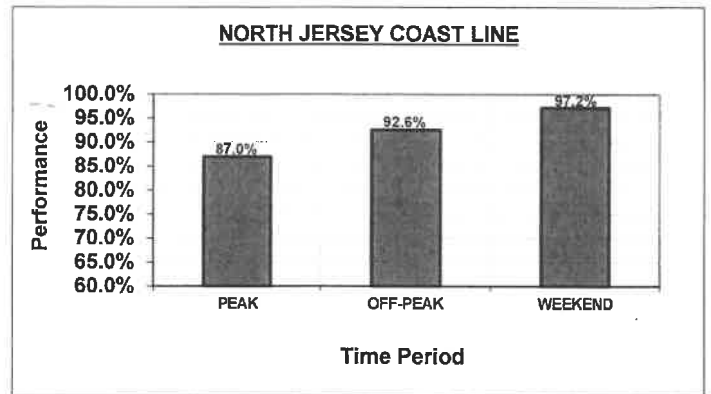
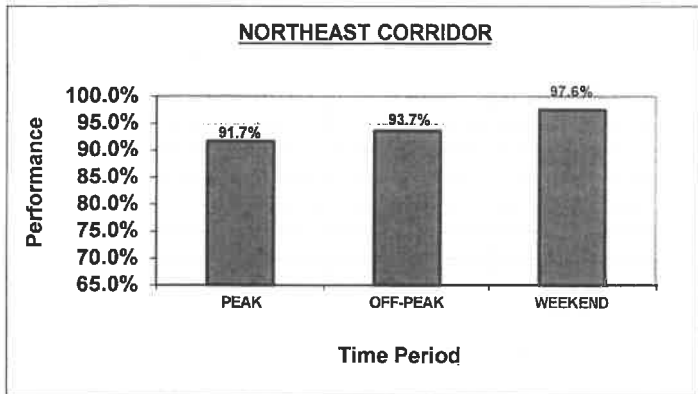


% BY LINE Trains Reported On Time



NOTE: ATLANTIC CITY SERVICE SUSPENDED FOR PTC

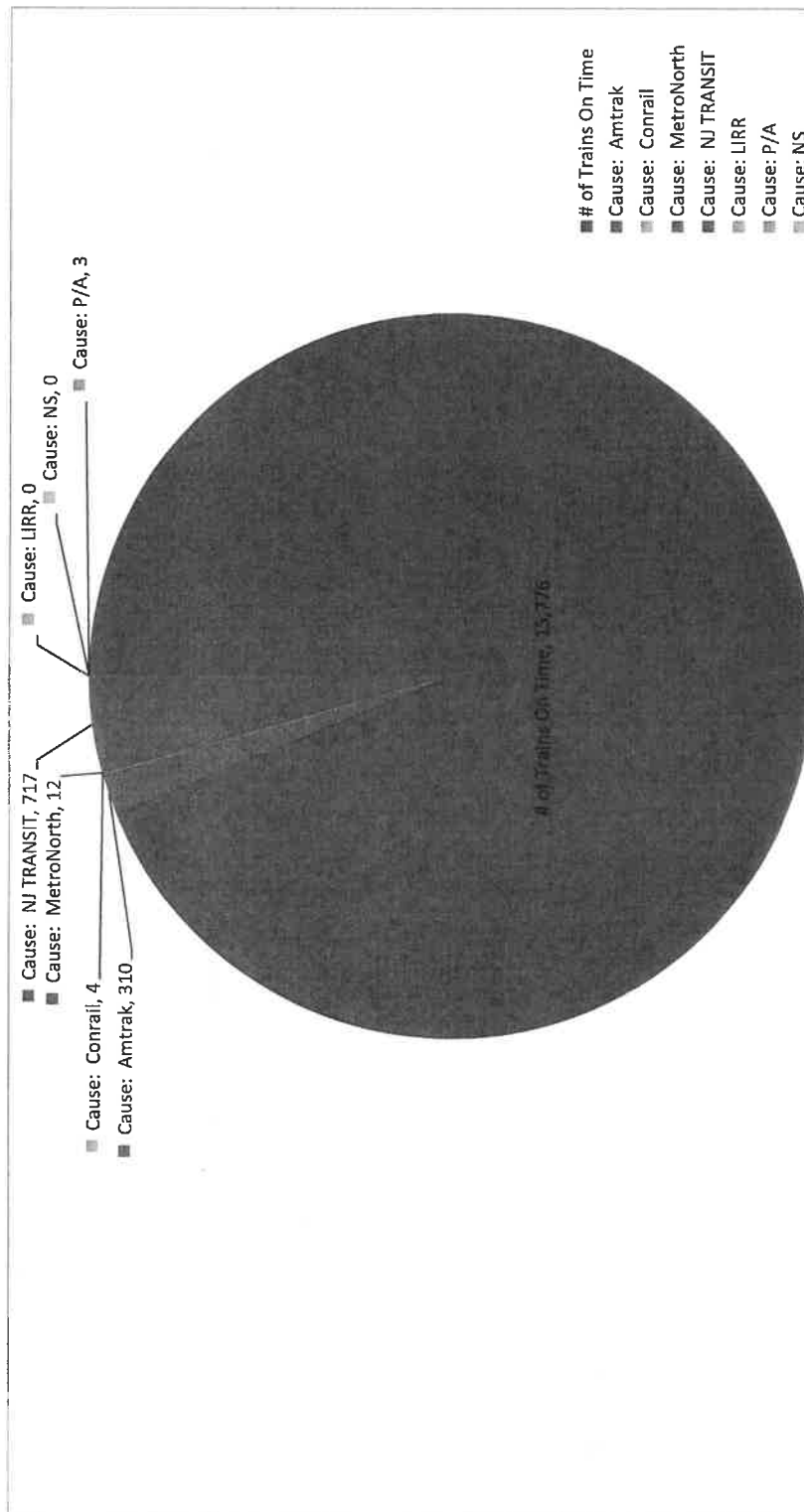
ON-TIME PERFORMANCE BY RAIL LINE & TIME PERIOD APRIL 2019



NJ TRANSIT Performance - FEBRUARY, 2019

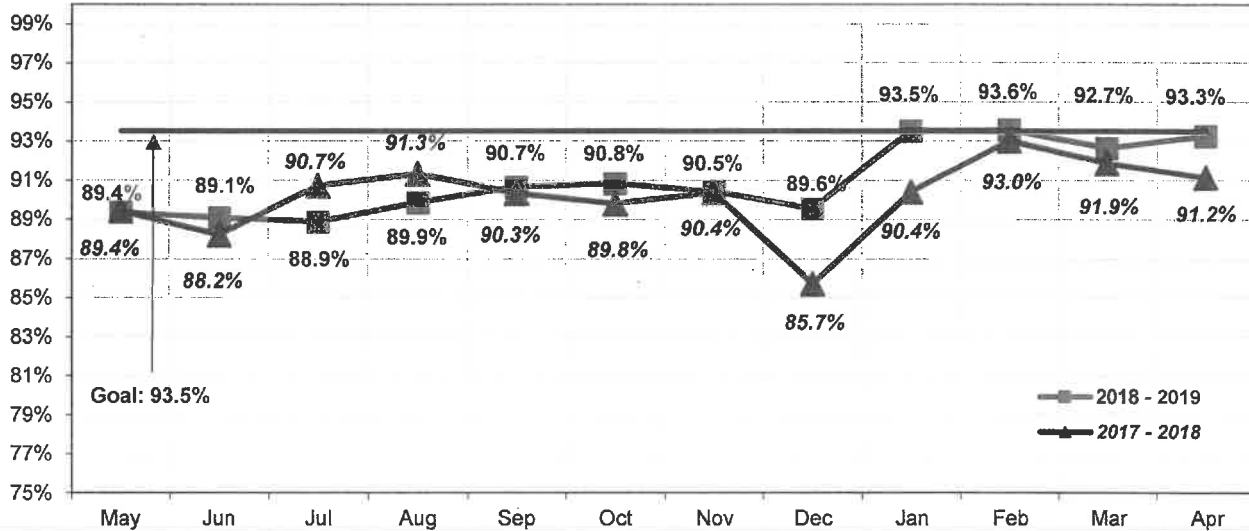
Late NJ TRANSIT Trains

# of Trains On		Cause: Amtrak		Cause: Conrail		Cause: MetroNorth		Cause: NJ TRANSIT		Cause: LIRR		Cause: P/A		Cause: NS	
# of Trains On Time	15,776	310	1.84%	4	0.02%	12	0.07%	717	4.26%	0	0.00%	3	0.02%	0	0.00%
# of Late Trains	1,046														
Total # of Trains	16,822														
Percentage On Time	93.8%														



NJ TRANSIT ON-TIME PERFORMANCE BUS MAY 2017 - APRIL 2019

% Buses Departing Major Terminals Within 6 Minutes of Schedule



	2018	2019	% Change
April Comparison	91.2%	93.3%	2.1%

	2018	2019	% Change
12-Month May - April	90.2%	91.0%	0.8%

Analysis:

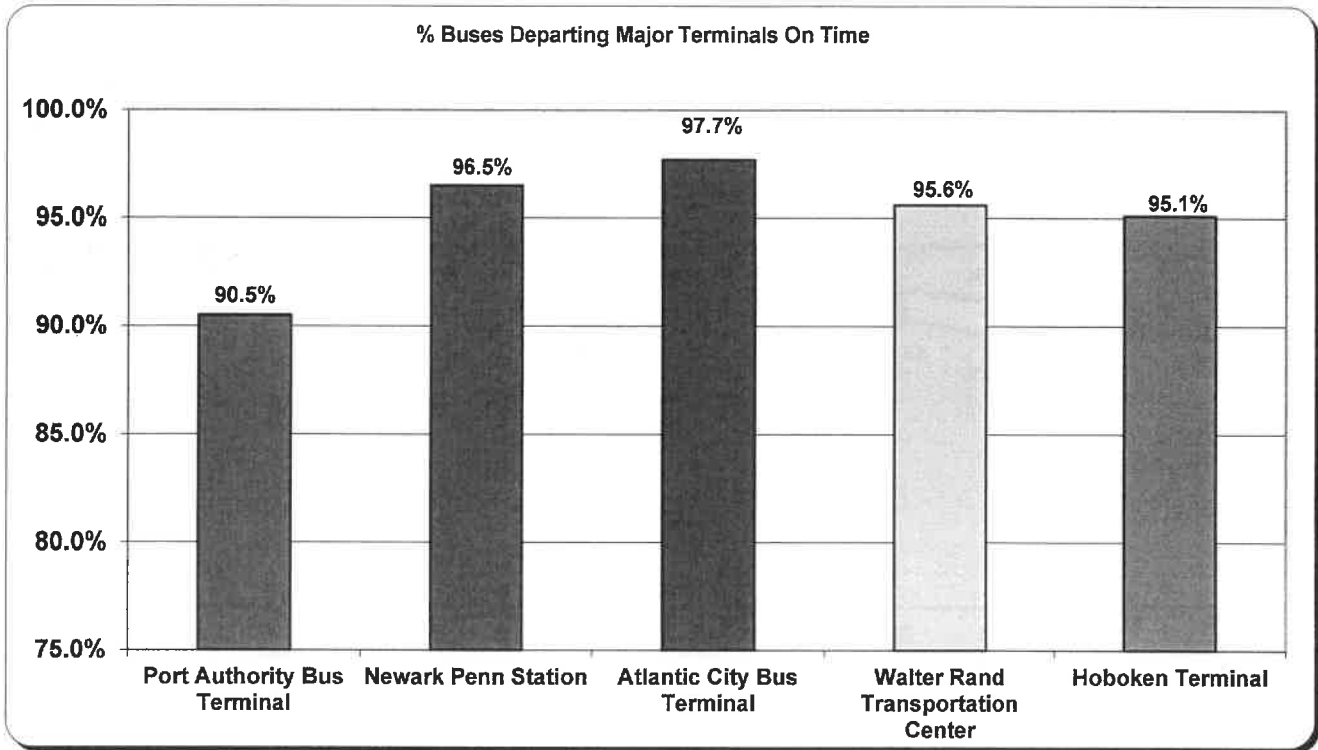
Bus On-Time Performance was 93.3% for April 2019. Of the 46,361 monitored departures 3,105 (or 6.37) experienced delays. Key causes included:

- At Port Authority Bus Terminal, manpower shortages impacted service on April 4 and multiple accidents on April 22 impacted service in the North tube.
- At Newark Penn, a bridge closure in Newark created heavy traffic and delays on April 10.

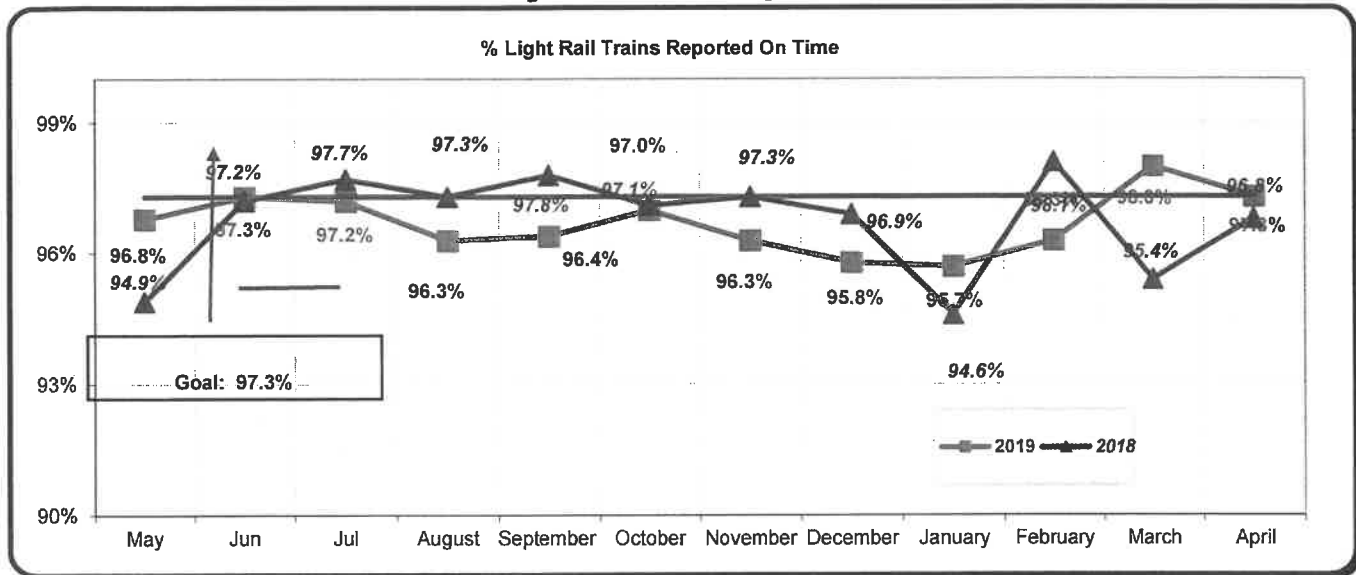
The 12-month average for Bus On-Time Performance for April - March was 91.0%, which increased by 0.8% from the previous year.

ON-TIME PERFORMANCE BUS

SUMMARY BY TERMINAL APRIL 2019



NJ TRANSIT ON-TIME PERFORMANCE May 2017 to April 2019



April Comparison	2018	2019	# Change
	96.80%	97.30%	0.5%

12-Month Average Ended May 2018 - April 2019	2018	2019	# Change
	96.76%	96.70%	-0.06%

Analysis:

Light Rail On-Time Performance systemwide was 97.3% for the month of April 2019. Of the 26,950 scheduled departures, 707 experienced delays.

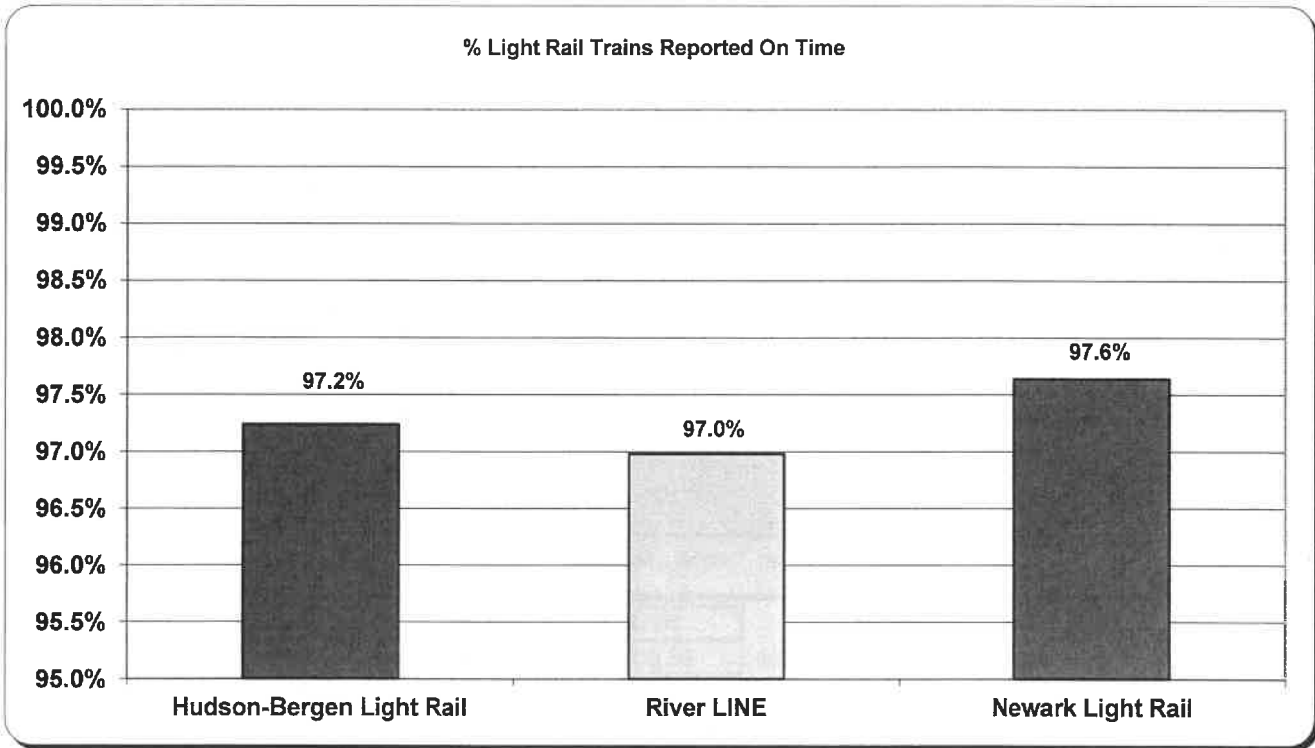
Causes included:

- RiverLINE - Delays on select days were caused by operator error, equipment malfunctions and signal malfunctions.
- Hudson-Bergen Light Rail - Delays on select days were caused by equipment issues, police activity and power issues.
- Newark Light Rail - Delays were caused by manpower shortages, mechanical faults, operator error and police activity.

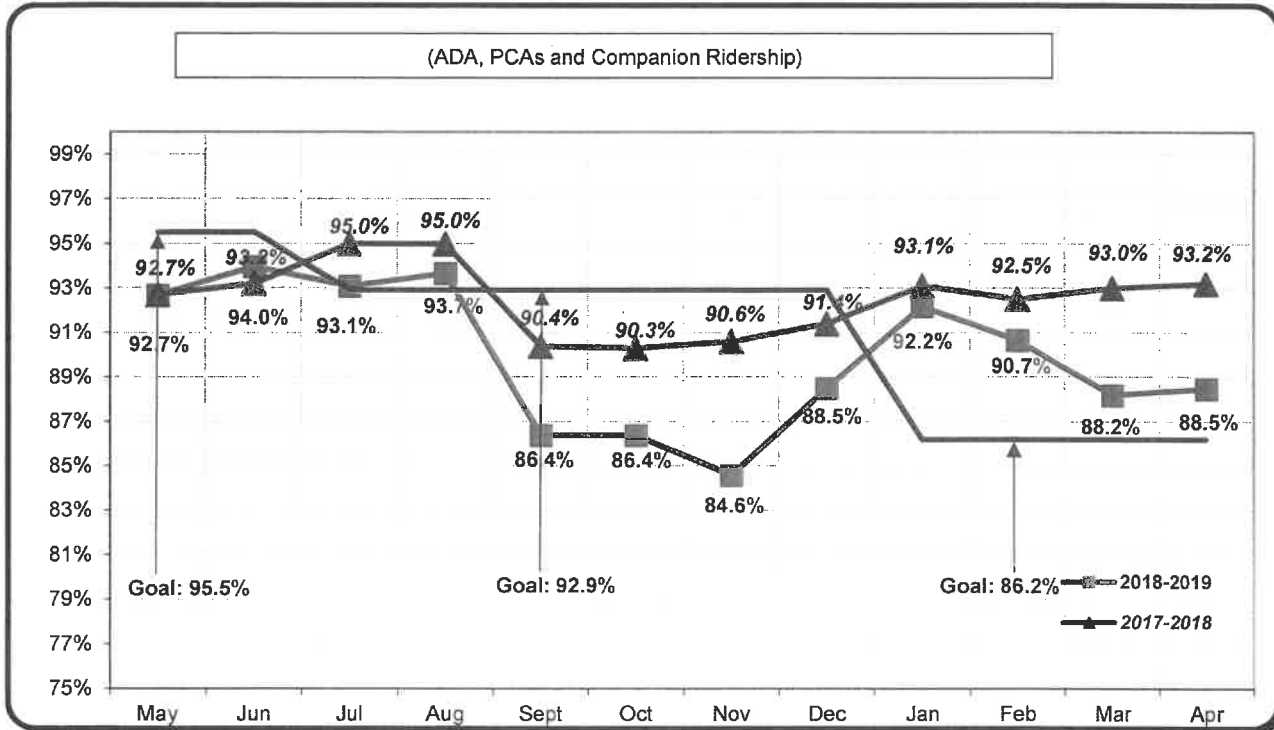
The 12 month Average for Light Rail On-Time Performance for May 2018 to April 2019 was 96.70%, which was 0.06% lower than the same time period in 2018.

ON-TIME PERFORMANCE LIGHT RAIL

SUMMARY BY LINE April 2019



NJ TRANSIT ON-TIME PERFORMANCE ACCESS LINK May 2017 - April 2019



	2018	2019	% Change
April Comparison	93.1%	88.5%	-4.6%

	2018	2019	Difference
April Ridership	140,822	152,563	11,741

	2017-2018	2018-2019	% Change
12-Month Average May-April	92.5%	89.9%	-2.6%

Analysis:

Access Link On-Time Performance was 88.5% for April, 2019. In serving 152,563 total riders, for 138,961 ADA customers trips, 15,922 (or 11.5%) experienced delays.

Key causes include:

- Driver shortages and issues retaining drivers in the larger regions
- Delays due to increased traffic volume and congestion
- Scheduling impact from pick-up window reduction
- OTP reduction due to implementation of new run structure in the larger regions

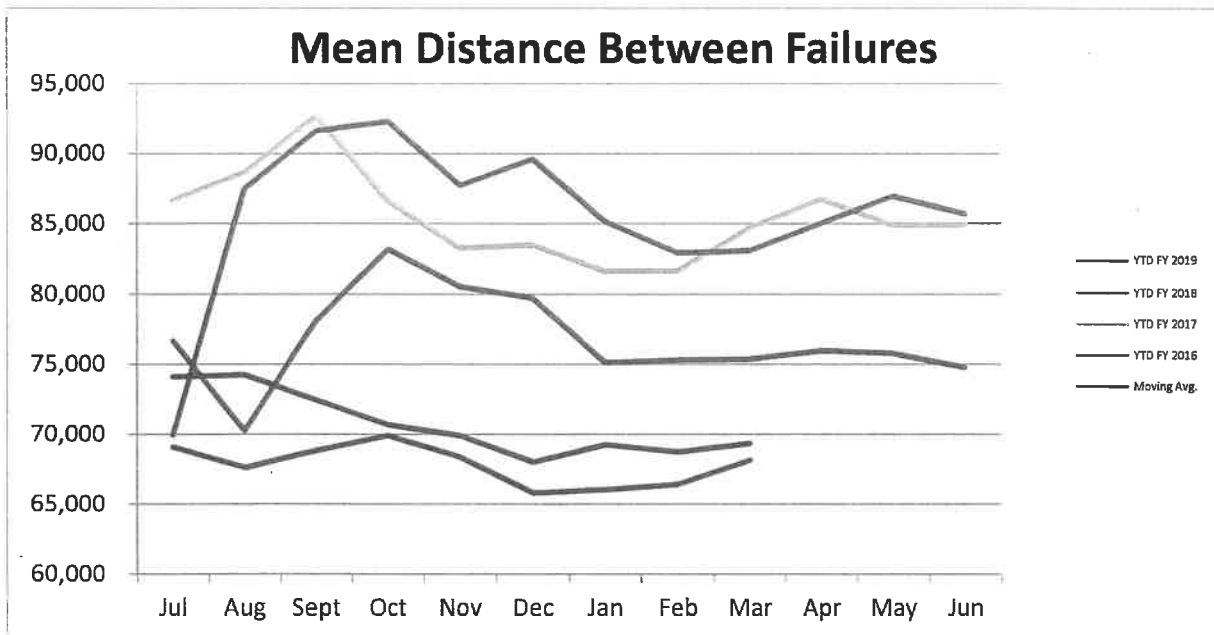
The 12-month average for Access Link On-Time Performance for May 2018 - April 2019 was 89.9%, which decreased by 2.6%.

MEAN DISTANCE BETWEEN FAILURES

March 2019

NJ TRANSIT Rail Operations
Mean Distance Between Failures

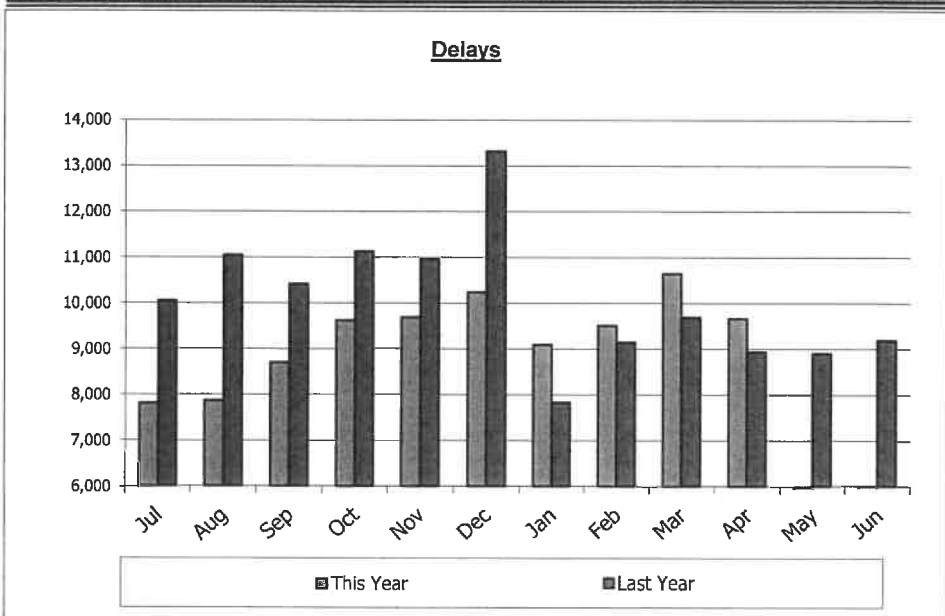
Month	YTD FY2019	YTD FY2018	YTD FY2017	YTD FY2016	12 Month Moving Avg.
Jul	69,055	76,674	86,683	69,926	74,107
Aug	67,612	70,263	88,680	87,565	74,238
Sept	68,823	78,151	92,705	91,669	72,424
Oct	69,913	83,213	86,626	92,329	70,679
Nov	68,356	80,523	83,272	87,756	69,908
Dec	65,796	79,711	83,501	89,655	67,997
Jan	66,025	75,139	81,633	85,167	69,249
Feb	66,391	75,324	81,639	82,949	68,717
Mar	68,141	75,376	84,715	83,112	69,344
Apr	-	75,968	86,771	85,060	-
May	-	75,787	84,920	87,022	-
Jun	-	74,776	84,936	85,722	-



Garage Performance Parameters

April 2019

Location	Miles Between In-Service Delays			
	FY2019 Goal	This Month	FY2019 YTD	FY2018 YTD
Fairview	6,000	3,903	4,148	5,144
Greenville	7,500	5,137	5,174	4,940
Market Street	8,500	7,935	6,764	7,764
Meadowlands	10,200	5,465	5,434	6,443
Oradell	10,500	8,371	7,623	8,567
Wayne	10,500	18,095	9,360	9,345
Northern Division	-	7,612	6,631	7,393
Big Tree	8,800	7,014	5,830	7,445
Hilton	10,200	10,055	7,810	9,398
Howell	16,750	25,838	25,021	30,393
Ironbound	9,600	6,689	8,048	9,753
Orange	9,250	5,841	6,832	8,473
Morris	10,500	8,017	26,211	47,110
Central Division	-	9,158	9,672	11,908
Egg Harbor	15,500	19,777	19,790	15,319
Hamilton	13,000	10,390	9,198	12,575
Newton Avenue	12,000	19,231	12,516	12,035
Washington Twp.	14,500	16,977	18,301	12,396
Southern Division	-	16,769	15,520	13,258
Bus Operations	-	9,668	9,185	10,070

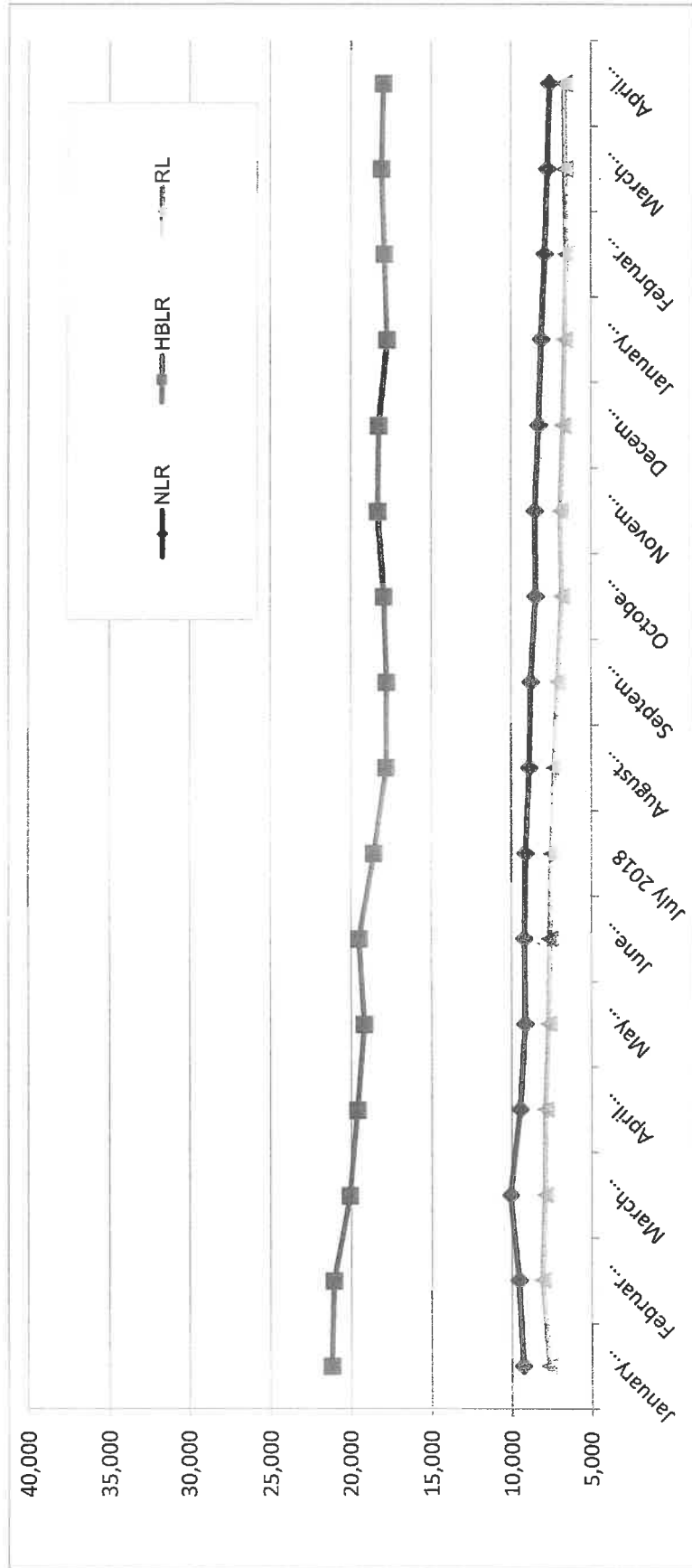


NJ TRANSIT - LIGHT RAIL, April 2019

Average Miles Between In Service Failures

NJT LIGHT RAIL	MDBSF *	
	April 2019	March 2019
Newark Light Rail	7,615	7,767
Hudson Bergen	17,967	18,062
River LINE	6,685	6,616

AVERAGE MILES BETWEEN IN-SERVICE MECHANICAL FAILURES



DBE/SBE PROGRAM

State Funded Contracts

During the month April 2019, NJ TRANSIT awarded **\$3,212,291.00** in state funded contracts. Of that total, Small Business Enterprises (SBEs) received **\$619,958.00** or **19.30%**.

During the State Fiscal Year **2019** (July 1, 2018 through June 30, 2019) NJ TRANSIT awarded **\$777,759,122.51** in state funded contracts. Of that total, SBEs received **\$27,074,315.58** or **3.48%**.

Note: The above reflects the Procurement Report of Awards received May 1, 2019.

SBE Goal Attainment from July 1, 2018 through June 30, 2019 (FY 2019)

Category 1 SBEs received	\$5,257,388.92	or 0.68%
Category 2 SBEs received	\$15,410,052.62	or 1.98%
Category 3 SBEs received	\$806,321.54	or 0.10%
Category 4 SBEs received	\$379,895.18	or 0.05%
Category 5 SBEs received	\$5,220,657.32	or 0.67%
Category 6 SBEs received	\$0.00	or 0.00%

FTA Funded Contracts (updated Quarterly – next update will occur July 2019)

During the 2nd Quarter (January 1, 2019 – March 31, 2019) of Federal Fiscal Year 2019 (October 1, 2018 through September 30, 2019), the FTA funded share of NJ TRANSIT’s federal contracts awarded was **\$597,018.92**. Of that total, Disadvantaged Business Enterprises (DBEs) received **\$0.00** or **0.00%**.

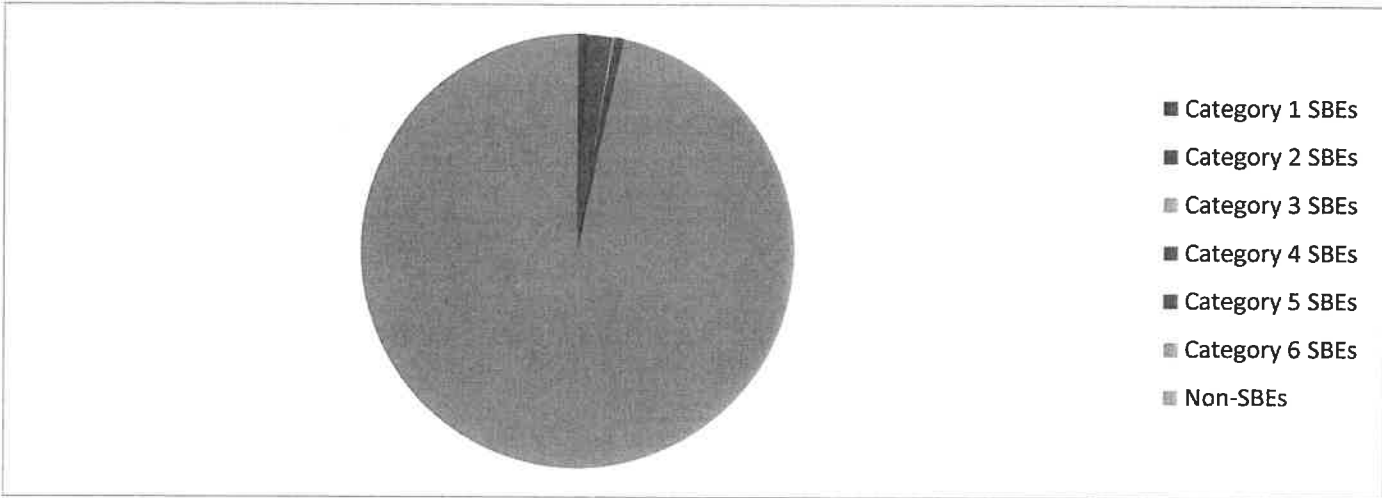
DBE Goal Attainment from January 1, 2019 – March 31, 2019 (FFY 2019)*

Contracts awarded	\$597,018.92
DBEs received	\$0.00 or 0.00%

**Numbers reflect federal share.*

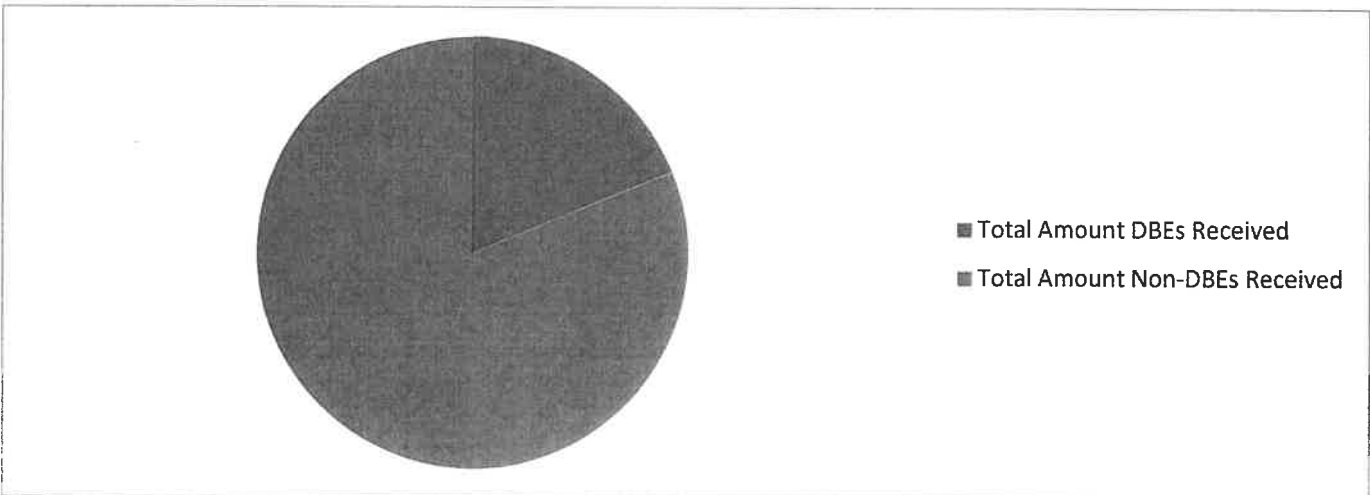
SBE PARTICIPATION
STATE CONTRACTS
STATE FYTD 2019

Category 1 SBEs	\$5,257,388.92	0.68%
Category 2 SBEs	\$15,410,052.62	1.98%
Category 3 SBEs	\$806,321.54	0.10%
Category 4 SBEs	\$379,895.18	0.05%
Category 5 SBEs	\$5,220,657.32	0.67%
Category 6 SBEs	\$0.00	0.00%
Non-SBEs	\$750,684,806.93	96.52%



DBE PARTICIPATION
FEDERAL CONTRACTS
FEDERAL FYTD 2018

Total Amount DBEs Received	\$28,300,272.54	18.86%
Total Amount Non-DBEs Received	\$121,748,976.72	81.14%



EMPLOYEE RECOGNITION

NJ TRANSIT employees bid farewell after outstanding careers

Several NJ TRANSIT employees retired recently with careers ranging 10 to 34 years of service:

1. Alan Bellifemine, Conductor – Various – 30 years
2. Kelvin Johnson, Principal Project Engineer – Penn Plaza – 29 years
3. Ronald Markowitz, Foreman MOE – Long Branch – 30 years
4. Eugene Ruocchio, Conductor – Various – 30 years
5. William Sachs, Locomotive Engineer – Various – 31 years
6. Shin Chung, Operator – Newton Avenue – 11 years
7. Rodolfo Delasarmas, Operator – Oradell – 10 years
8. Maria Romero, Operator – Meadowlands – 18 years
9. Steven Gant, Repairman A – Meadowlands – 29 years
10. Patricia Graham, Operator – Greenville – 12 years
11. Christine Lopez, Depot Master – Big Tree – 25 years
12. Priscilla McIntosh, Depot Clerk – Hilton – 23 years
13. Rolando Munoz, Operator – Meadowlands – 23 years
14. Anh Pham, Maintainer A – Orange – 30 years
15. Ulrick Ralph, Operator – Fairview – 26 years
16. Emma Smith-Porter, Operator – Market Street – 23 years
17. Luis Tirado, Operator – Market Street – 19 years
18. Prapaporn LaCapra, Director Strategic HR Analysis – Penn Plaza – 34 years
19. Eric Khisa, Principle Accountant – Penn Plaza – 26 years

ACTION ITEMS

**ITEM 1905-23
EXECUTION OF CONTRACT 19-002 FOR THE PROVISION OF ACCESS LINK SERVICE IN
REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER AND SALEM COUNTIES)**



ITEM 1905-23

EXECUTION OF CONTRACT 19-002 FOR THE PROVISION OF ACCESS LINK SERVICE IN REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER AND SALEM COUNTIES)



- Staff seeks authorization for contract 19-002 with Easton Coach Company of Easton, PA for the provision of Access Link service in Region 2 (Burlington, Camden, Cumberland, Gloucester and Salem Counties) service for an initial 32 month base period from October 20, 2019 to June 30, 2022 at a cost of \$47,824,997.00 plus five percent for contingencies; and
- An additional two (2), 24-month periods in accordance with the Request for Proposal and the carriers proposal at a cost not to exceed \$40,058,296.00 for the first option period and \$37,993,845.00 for the second option period, plus five percent for contingencies, subject to the approval of funds and Board approval of NJ TRANSIT's operating budget.

ITEM 1905-23
EXECUTION OF CONTRACT 19-002 FOR THE PROVISION OF ACCESS LINK SERVICE IN REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER AND SALEM COUNTIES)



- This authorization will ensure that NJ TRANSIT remains in compliance with its federal obligation to provide ADA paratransit service.
- Will allow those who are unable to use NJ TRANSIT's fixed route local bus service the opportunity to become independent and increase their community participation.
- Currently in Region 2, 12,600 people are certified to use Access Link and we provided 371,644 passenger trips in FY 2018.

ITEM 1905-23: EXECUTION OF CONTRACT 19-002 FOR THE PROVISION OF ACCESS LINK SERVICE IN REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER, AND SALEM COUNTIES)

WHEREAS, in July 1990, the Americans with Disabilities Act was signed into law requiring public entities operating fixed route transportation systems to provide paratransit services for individuals with disabilities; and

WHEREAS, NJ TRANSIT'S Technical Evaluation Committee has reviewed the vendor proposals received for the provision of Access Link service in Region 2; and

WHEREAS, upon completion of the competitive procurement process, it has been determined that Easton Coach Company of Easton, Pennsylvania, submitted the proposal that provides the best value and is in the best interest of NJ TRANSIT; and

WHEREAS, entering into NJ TRANSIT Contract No 19-002 will ensure uninterrupted Access Link service which is a requirement of the ADA and Federal Government;

NOW, THEREFORE, BE IT RESOLVED that the Chair or Executive Director is authorized to enter into NJ TRANSIT Contract No. 19-002 with Easton Coach Company of Easton, Pennsylvania, and take all other actions necessary to implement and administer the agreement for the provision of Access Link service in Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) service for an initial 32-month base period from October 20, 2019 to June 30, 2022 at a cost of \$47,824,997.00, plus five percent contingencies, subject to the availability of funds and Board approval of NJ TRANSIT's operating budget; and

BE IT FUTHER RESOLVED that the Chair or Executive Director is authorized to exercise the options to extend NJ TRANSIT Contract No. 19-002 for an additional two option periods in accordance with the Request for Proposal and the carriers proposal, at a cost not to exceed \$40,058,296.00, for the first option period of 24 months, and \$37,993,845.00 for the second option period of 20 months, plus five percent for contingencies, subject to the approval of funds and Board approval of NJ TRANSIT's operating budget.

ITEM 1905-24: EXTENSION OF CONTRACT 12-011 FOR THE PROVISION OF ACCESS LINK SERVICE FOR REGION 2 (BURLINGTON, CAMDEN, CUMBERLAND, GLOUCESTER, AND SALEM COUNTIES)

WHEREAS, in July 1990, the Americans with Disabilities Act was signed into law requiring public entities operating fixed route transportation systems to provide paratransit services for individuals with disabilities; and

WHEREAS, First Transit Inc. has provided Access Link service in Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) with NJ TRANSIT under NJ TRANSIT Contract No. 12-011 since July 14, 2012; and

WHEREAS, extending NJ TRANSIT Contract No 12-011 will ensure uninterrupted Access Link service which is a requirement of the ADA and Federal Government; and

WHEREAS, after completion of a competitive process, extension of NJ TRANSIT Contract No. 12-011 will allow for a seamless transition to the new carrier;

NOW, THEREFORE, BE IT RESOLVED that the Chair or Executive Director is authorized to extend NJ TRANSIT Contract No. 12-011, the existing agreement with First Transit Inc. of Cincinnati, Ohio, and take all other actions necessary to implement and administer the agreement for the continued operation of Access Link Region 2 (Burlington, Camden, Cumberland, Gloucester, and Salem Counties) service for an additional three-month period, from July 13, 2019 through October 19, 2019, at a total cost not to exceed \$4,844,759.00, plus five percent for contingencies, subject to the availability of funds and Board approval of NJ TRANSIT's operating budget.

ITEM 1905-25: AMENDMENT TO PASSAIC COUNTY LOCAL BUS SERVICE CONTRACT TO TEMPORARILY OPERATE BERGEN COUNTY LOCAL BUS SERVICE

WHEREAS, Saddle River Trails, Inc. provided a formal notice of termination of NJ TRANSIT Contract No. 17-023 for the operation of the Bergen County Local Bus service effective April 2, 2019; and

WHEREAS, continuation of this service is important to our riders, and it is consistent with our mission to provide for the operation of a coherent public transportation system in the most efficient and effective manner; and

WHEREAS, Community Transportation Inc. has operated the Bergen County Local Bus Service under contract with NJ TRANSIT for the past seven years and is familiar with the routes and service requirements and can immediately take over the operation of the service without incurring any service disruptions; and

WHEREAS, Community Transportation was previously selected through a competitive procurement process to operate the Passaic County Local Bus Service under NJ TRANSIT Contract No. 17-001; and

WHEREAS, staff has determined that the most expeditious and cost-effective way to ensure the continuation of the Bergen county Local Bus Service is to amend the existing Passaic County Local Bus Service contract with Community Transportation to operate the Bergen County Local Bus service on a temporary basis until such time as a Request for Proposal procurement process can be completed;

NOW, THEREFORE, BE IT RESOLVED that the Chair or Executive Director is authorized to take all actions necessary to amend NJ TRANSIT Contract No. 17-001 with Community Transportation Inc., of Paramus, New Jersey, to operate the Bergen County Local Bus Service for a period of 12 months at a cost not to exceed \$7,765,325, plus five percent for contingencies, for a total contract authorization of \$8,153,591, subject to the availability of funds and board approval of NJ TRANSIT's operating budget.

ITEM 1905-26 NJ TRANSIT RESILIENCE PROGRAM: BAY HEAD SUBSTATION CONSTRUCTION CONTRACT AND CONSTRUCTION MANAGEMENT SERVICES CONTRACT

Superstorm Sandy caused significant damage to the Bay Head Substations.

The Bay Head Substation Project includes replacement of the existing substation and construction of a new generator building and two wayside power substations.



ITEM 1905-26 NJ TRANSIT RESILIENCE PROGRAM: BAY HEAD SUBSTATION CONSTRUCTION CONTRACT AND CONSTRUCTION MANAGEMENT SERVICES CONTRACT

- Seeking authorization to contract with **PKF-Mark III, Inc.** for **Construction Services** (No. 17-026X), for the construction of the new Bay Head Substation Project, in an amount not to exceed **\$20,657,858.61**, plus five percent for contingencies, subject to the availability of funds.
- Seeking authorization to contract with **T. Y. Lin** for **Construction Management Services** (No. 17-008), during construction of the new Bay Head Substation Project in an amount not to exceed **\$3,059,350.72**, plus five percent for contingencies, subject to the availability of funds.



ITEM 1905-26: NJ TRANSIT RESILIENCE PROGRAM: BAY HEAD SUBSTATION CONSTRUCTION CONTRACT AWARD AND CONSTRUCTION MANAGEMENT SERVICES CONTRACT AWARD

WHEREAS, NJ TRANSIT seeks to enhance the capacity, reliability, and resiliency of its electrical service in Bay Head Yard; and

WHEREAS, On October 29, 2012, the storm surge from Superstorm Sandy caused significant damage to two of the Bay Head Yard substations; and

WHEREAS, NJ TRANSIT is committed to advancing long-term recovery and resiliency projects resulting from Superstorm Sandy that allow facilities and equipment to better withstand and recover from extreme weather events; and

WHEREAS, authorization of this Construction Contract and Construction Management Services Contract will allow for replacement of the two existing substations in Bay Head Yard in a resilient manner; and

WHEREAS, the Bay Head Substation has been designed and situated to provide reliable and resilient electric power to both the wayside power systems and supporting rail yard infrastructure; and

WHEREAS, the new substation will be elevated 2.5 feet above the base flood elevation and includes a second utility feeder to increase the reliability of the service from the electric company; and

WHEREAS, the NJ TRANSIT Office of Business Development (OBD) assigned a Race Neutral Disadvantaged Business Enterprise goal for this construction contract, and PKF-Mark III, Inc., identified 11.42 percent DBE participation; and

WHEREAS, upon completion of a competitive procurement process, it was determined that PKF-Mark III, Inc. submitted the lowest responsive and responsible bid; and

WHEREAS, the NJ TRANSIT OBD assigned a Race Neutral Disadvantaged Business Enterprise goal for this construction management services contract, and T. Y. Lin of Hackettstown, New Jersey, identified 7.29 percent DBE participation; and

WHEREAS, upon completion of a competitive procurement process, it was determined that T. Y. Lin of Hackettstown, New Jersey, submitted the most qualified responsive, responsible bid; and

WHEREAS, the Federal Transportation Authority and Transportation Trust Fund are the anticipated sources of funding for this project;

NOW, THEREFORE, BE IT RESOLVED, that the Chair or Executive Director is authorized to enter into NJ TRANSIT Contract No. 17-026X with PKF-Mark III, Inc., for providing construction services for the new Bay Head Substation Project in the amount not to exceed \$20,657,858.61, plus five percent for contingencies, subject to the availability of funds; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Chair or Executive Director is authorized to enter into NJ TRANSIT Contract No. 17-008 with T. Y. Lin of Hackettstown, New Jersey, for providing construction management services during construction of the new Bay Head Substation Project in the amount not to exceed \$3,059,350.52, plus five percent for contingencies, subject to the availability of funds.

ITEM 1905-27: SELECTION OF VENDOR FOR DENTAL PROGRAMS

WHEREAS, NJ TRANSIT provides its agreement and non-agreement employees with a comprehensive dental benefits program; and

WHEREAS, NJ TRANSIT's dental benefits program is self-insured and accordingly, NJ TRANSIT seeks benefit program vendors that offer extensive physician and hospital networks at discounted rates and purchasing programs that pass along discounts to control costs; and

WHEREAS, vendors are hired to manage and process NJ TRANSIT employee claims through their related networks and each of the providers is paid an administrative fee for services; and

WHEREAS, NJ TRANSIT seeks to achieve cost-effective administration of its health benefits program through a competitive procurement process; and

WHEREAS, on December 12, 2018, the Board approved selection of Cigna Corporation for Dental administration; and

WHEREAS, NJ TRANSIT has determined that Cigna Corporation is unable to wholly match NJ TRANSIT's prescribed plan structure, as was required to be considered responsive to the RFP requirements; and

WHEREAS, the highest ranked responsive proposer is Horizon Blue Cross Blue Shield of New Jersey for Dental administration;

NOW, THEREFORE, BE IT RESOLVED that the Chair or Executive Director is authorized to enter into NJ TRANSIT Contract No. 17-030R-B with Horizon Blue Cross Blue Shield of New Jersey, for Dental administration and this contract will provide healthcare benefits to active and retired NJ TRANSIT employees and their eligible dependents, beginning July 1, 2019, for a period of three (3) years, with administrative fees not to exceed \$293,000 per year, plus five percent for contingencies, and with two, one-year renewal options, subject to the availability of funds.

ITEM 1905-28: EXTENSION OF DENTAL PROGRAM ADMINISTRATOR CONTRACT

WHEREAS, NJ TRANSIT has issued Request for Proposals (RFP) for carriers to administer dental plans provided to its active and retired agreement and non-agreement employees; and

WHEREAS, initial vendor selection was approved by the Board in December 2018; and

WHEREAS, through the detail-level work required to implement, NJ TRANSIT has determined that the initial awardee is unable to wholly match NJ TRANSIT's prescribed plan structure, as was required to be considered responsive to the RFP requirements; and

WHEREAS, the activities required to reach agreement with the next responsive bidder will likely extend beyond June 30, 2019, the expiration date of the existing dental program administrator contract; and

WHEREAS, NJ TRANSIT wishes to ensure the seamless continuation of dental plans for its active employees and retirees during this period;

NOW, THEREFORE, BE IT RESOLVED that the Chair or Executive Director is authorized to extend NJ TRANSIT Contract No. 10-120 with its current dental program administrator, Horizon Blue Cross Blue Shield of New Jersey, for a period of six months or until such time when a new contract for dental program administration can be executed, beginning July 1, 2019, to ensure continuation of coverage for NJ TRANSIT employees, retirees, and eligible dependents, at the current rates not to exceed \$200,000, plus five percent for contingencies, subject to the availability of funds.

ITEM 1905-29: RECOMMENDATION TO APPROVE THE AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2018

WHEREAS, P.L. 1979, Ch. 150 and Executive Order 122 (McGreevey 2004) (EO122) and Executive Order 37 (Corzine 2006) (EO37) require, among other things, an annual audit of the financial statements of NJ TRANSIT by an independent auditor. For purposes of the Executive Orders, the audit is an examination of NJ TRANSIT's financial statements by a certified public accounting firm in compliance with generally accepted government auditing standards ("GAGAS"), issued by the Comptroller General of the United States, and in accordance with all applicable rules, regulations, and circulars; and

WHEREAS, EO 122 and EO 37 require the audit to be accompanied by a written certification from both the Executive Director and the Chief Financial Officer that the financial information provided to the independent auditor in connection with the audit is, to the best of their knowledge, accurate and that such information fairly represents, in all material respects, the financial condition and operational results of NJ TRANSIT for the fiscal year; and

WHEREAS, EO 37 also requires NJ TRANSIT to issue a comprehensive annual report concerning its operations. This comprehensive annual report is to include, among other things, the audited financial statements; and

WHEREAS, NJ TRANSIT's former independent auditor, Ernst & Young LLP (E&Y), has completed its examination of NJ TRANSIT's financial statements for the fiscal year ended June 30, 2018 in compliance with the enabling legislation and requirements of the Executive Orders. On April 29, 2019, E&Y issued an unmodified opinion, which concluded that the financial statements present fairly, in all material respects, the financial position of NJ TRANSIT as of June 30, 2018, and the changes in its financial position and its cash flows for the year then ended were in conformity with U.S. generally accepted accounting principles;

NOW, THEREFORE, BE IT RESOLVED that in compliance with Executive Order 122 (McGreevey 2004) and Executive Order 37 (Corzine 2006), it is respectfully recommended that the Board of Directors accept and approve NJ TRANSIT's audited financial statements for the fiscal year ended June 30, 2018.

ITEM 1905-30: REGULATIONS: READOPTION OF RULES WITH AMENDMENTS: N.J.A.C. 16:72 PROCUREMENT POLICIES AND PROCEDURES

WHEREAS, NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State of New Jersey to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner; and

WHEREAS, in accordance with N.J.S.A. 27:25-5(e), N.J.S.A. 27:25-11(c)(2), N.J.S.A. 27:25-11(f) and N.J.S.A. 27:25-32(a), NJ TRANSIT has the statutory authority to promulgate rules and regulations; and

WHEREAS, N.J.A.C. 16:72, Procurement Policies and Procedures, govern NJ TRANSIT's procurement of goods and services, which were initially effective June 4, 1981; and

WHEREAS, the most recent readoption of N.J.A.C. 16:72, Procurement Policies and Procedures, was effective November 21, 2011 and is currently set to expire November 17, 2019; and

WHEREAS, the procedures provide protection of the interest of the general public, the taxpayers, and of the potential vendors/contractors; and

WHEREAS, staff reviewed the current regulation and determined that the rules are necessary, adequate, reasonable, efficient, understandable, and responsible to the purposes for which they were originally promulgated, and should be readopted with amendments; and

WHEREAS, the proposed readoption with amendments was published in the New Jersey Register on January 7, 2019 (Exhibit A). The comment period expired on March 8, 2019 and two comments were received, both of which were considered and accepted, restoring the 20 calendar day bid notice period in N.J.A.C. 16:72-2.1 and adding a five calendar day period between amendment and bid opening in N.J.A.C. 16:72-2.5; and

WHEREAS, after the deadline for proposal publication occurred, the NJ TRANSIT reform bill (P.L. 2018 c.162) was passed, this proposed readoption with amendments includes that technical change referencing the NJ TRANSIT reform bill in N.J.A.C. 16:72-1.5(b) and (i); and

WHEREAS, these amended rules will advance the guidelines and procedures that govern effective and efficient procurement of goods and services in support of statewide transit services by NJ TRANSIT;

NOW, THEREFORE, BE IT RESOLVED that the Chair or Executive Director or his designee is authorized to take all actions necessary to adopt the regulations, N.J.A.C. 16:72 et seq., Procurement Policies and Procedures, consistent with this Board item and Exhibit B.

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Accordingly, the proposed amendments do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law and no further analysis is required.

Jobs Impact

The Commission does not anticipate that any jobs will be lost or generated as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., since the proposed amendments concern changes to the current grade of licenses and grade advancements for maritime pilots, and do not impose reporting, recordkeeping, or compliance requirements on small businesses as defined under the Act.

Housing Affordability Impact Analysis

Since the proposed amendments concern changes to the current grades of licenses and grade advancements for maritime pilots, the proposed amendments would have no impact on the number of housing units or the average costs of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed amendments concern changes to the grades of licenses and grade advancements for maritime pilots, the proposed amendments would have no impact on smart growth or on housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. MARITIME PILOT LICENSING

16:64-3.5 Grades of licenses and grade advancement

(a)-(d) (No change.)

(e) For all maritime pilots who obtain a certificate of appointment from the Commission pursuant to N.J.A.C. 16:64-7.5(a) on or after October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated in (e)1 through 8 below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd's Register of Ships. A maritime pilot whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessels.

1. (No change.)

2. Grade 6: A Grade 6 pilot shall complete a minimum of a one-year length of service in Grade 6. The draft may not exceed 33 feet and the registered gross tonnage may not exceed [36,000] **45,000**.

3. Grade 5A: A Grade 5A pilot shall complete a minimum of a one-year length of service in Grade 5A. The draft may not exceed [36] **35** feet and the registered gross tonnage may not exceed [42,000] **60,000**.

4. Grade 5: A Grade 5 pilot shall complete a minimum of a one-year length of service in Grade 5. The draft may not exceed 39 feet and the registered gross tonnage may not exceed [48,000] **70,000**.

5. Grade 4: A Grade 4 pilot shall complete a minimum of a one-year length of service in Grade 4. The draft may not exceed 42 feet and the registered gross tonnage may not exceed [58,000] **80,000**.

6. Grade 3: A Grade 3 pilot shall complete a minimum of a one-year length of service in Grade 3. The draft may not exceed 45 feet and the registered gross tonnage may not exceed [64,000] **90,000**.

7. Grade 2: A Grade 2 pilot shall complete a minimum of a one-year length of service in Grade 2. The draft may not exceed [50] **48** feet and the registered gross tonnage may not exceed [70,000] **105,000**.

8. (No change.)

(a)

**NEW JERSEY TRANSIT CORPORATION
New Jersey Transit Procurement Policies and
Procedures**

**Proposed Readoption with Amendments: N.J.A.C.
16:72**

**Proposed New Rules: N.J.A.C. 16:72-1.11, 4, 5.1, and
6**

Authorized By: New Jersey Transit Corporation, Kevin S. Corbett,
Executive Director.

Authority: N.J.S.A. 2A:44-143, 27:25-5.e, 27:25-6, and 27:25-11.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2019-005.

Submit comments by March 8, 2019, to:

Joyce J. Zuczek
New Jersey Transit Corporation
One Penn Plaza East
Newark, NJ 07105-2246
E-mail: RuleProcurementComments@njtransit.com.

The agency proposal follows:

Summary

The New Jersey Transit Corporation (NJ TRANSIT) has evaluated the rules at N.J.A.C. 16:72, Procurement Policies and Procedures, scheduled to expire on May 21, 2019, pursuant to N.J.S.A. 52:14B-5.1. As NJ TRANSIT filed this notice of re-adoption prior to that date, the expiration date is extended 180 days to November 17, 2019, pursuant to N.J.S.A. 52:14B-5.1.c(2). NJ TRANSIT has determined that the rules in Chapter 72 are necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated, with the exception of the changes discussed below and, therefore, proposes to readopt the chapter with amendments.

N.J.A.C. 16:72 contains the requirements governing the procurement by NJ TRANSIT of goods and services, as well as the debarment, suspension, and disqualification of persons doing business with NJ TRANSIT. With certain exceptions, the rules require all purchases, whether made as a result of formal advertising or otherwise, to be made on a competitive basis, to the maximum practical extent, and implement the procurement requirements set forth in N.J.S.A. 27:25-1 et seq.

A summative review of each of the subchapters follows:

Subchapter 1, General Provisions, describes the general provisions, applicable to all procurements, including the method of procurement and the means by which the public may secure information about the bidding process conducted by NJ TRANSIT.

Subchapter 2, Bidding Procedures, describes the procedures for public bidding.

Subchapter 3, Requests for Proposals, describes the procedure to be used in the request for proposal (RFP) process.

Subchapter 4, Debarment, Suspension and Disqualification of Persons, describes the process for debarment, suspension, and disqualification.

The proposed amendments and new rules are as follows:

N.J.A.C. 16:72-1.2 sets forth the definitions for the terms used in this chapter. A new definition has been added for "bidder or proposer" to reflect that either may be used to refer to those firms responding to a solicitation issued by NJ TRANSIT. A new definition has been added for "Chief Procurement Officer," in light of the proposed addition of a complaint procedure in proposed new Subchapter 6 overseen by the "Chief Procurement Officer." New definitions have been added for "design-build (D/B)," "design-build project," "design-build-finance-

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operate and maintain (DBFOM),” and “design-build operate and maintain (DBOM)” to incorporate NJ TRANSIT’s statutory authority to use these project delivery methods. The definition for “line item” is proposed for amendment to delete the reference to an Invitation for Bids and replace it with the general term “solicitation,” to include all procurement methods used by NJ TRANSIT. The definition of “procurement” is proposed for amendment to clarify that it includes contracts for “goods” and that it includes all contracts awarded by NJ TRANSIT, whether by advertisement, or other competitive process, and those contracts awarded under N.J.A.C. 16:72-1.5(e), procurement by exception. A new definition has also been added for “procurement-by-exception” although this type of procurement has been included in previous rules. A new definition for “publicly available” has been added in light of the addition of the proposed amendment to these rules at N.J.A.C. 16:72-1.11, addressing requests for bids or proposals through New Jersey’s Open Public Records Act.

N.J.A.C. 16:72-1.4 sets forth the threshold requirement that one must be a responsible contractor to be considered in a procurement process or eligible for a contract award and lays out the requirements that one must meet to be a responsible contractor. Paragraph (a)1 is proposed for amendment to delete “if adequate security is not otherwise furnished” and to delete “and reputation” in paragraph (a)4. N.J.A.C. 16:72-1.4(c) is proposed for amendment by changing the mandatory “shall” requirement for deeming a prospective contractor not responsible, based on a previous contract default on the same matter, to the permissive “may.” In order to determine if a prospective contractor should be determined to be not responsible based on a previous contract default, the circumstances surrounding the default will be considered. N.J.A.C. 16:72-1.4(e) is proposed for amendment to reflect that prospective contractors must provide the disclosure of ownership required by N.J.S.A. 52:25-24.2.

N.J.A.C. 16:72-1.5 sets forth the methods of procurement utilized by NJ TRANSIT. Subsection (a) is proposed for amendment to reflect that an Invitation for Bid is the type of solicitation used where an award is made on the basis of cost, no negotiations are necessary, and a firm, fixed-price contract is appropriate.

Subsection (b) is proposed for amendment to reflect that purchases made by NJ TRANSIT in accordance with its delegated purchasing authority shall be made in accordance with the process set forth by the New Jersey Department of the Treasury regarding the number of quotations. Existing paragraphs (b)1, 2, and 3, which are proposed for deletion, reflected the quotation procedure that is no longer applicable. The amended language permits compliance with any future changes in the State of New Jersey Treasury Circular governing delegated purchasing authority procedures.

Subsection (c) is proposed for amendment to delete the specific reference to professional and technical services and expand it to include a request for proposal as the solicitation document for goods and services where the proposals will not be evaluated solely on the basis of cost. The proposed amendment further requires the advertisement of a request for proposal, or, for professional or technical services, the request for proposal may be issued to three vendors, or an alternative procurement method may be used where determined by the Executive Director to be in NJ TRANSIT’s best interest.

Proposed new subsection (d) permits an alternate method of advertised procurement to be used when the Executive Director determines that the alternate method is in NJ TRANSIT’s best interest.

Recodified subsection (e), Procurement-by-exception, is proposed for amendment to include an additional basis for purchases related to homeland security and domestic preparedness.

Proposed new subsection (f) reflects that the Executive Director, or his or his designee, may negotiate the final terms and conditions of any contract with bidders or proposers and the ability to negotiate should be set forth in the solicitation document. The amendment also sets forth that bids and proposals will not be publicly available until after negotiations have been completed and the notice of intent to award the contract has been issued.

Recodified subsection (g) is proposed for amendment to reflect that the Executive Director, or “his or her” designee, has the authority for a procurement by exception.

Proposed new subsection (h) permits NJ TRANSIT to make purchases from Federal supply schedules or through or from vendors holding contracts with other states, multistate authorities, or other governmental entities to operate rail or motorbus service.

Proposed new subsection (i) permits participation by NJ TRANSIT in a publicly competed contract, by a public or non-profit entity, to support its operations or capital program.

N.J.A.C. 16:72-1.7 sets forth the procedure for the execution of contracts. It is proposed for amendment to include additional language to clarify that no contract or purchase order can be entered into, unless it meets NJ TRANSIT By-Laws, as well as other laws and this chapter.

N.J.A.C. 16:72-1.8 sets forth the requirements for the drafting of specifications. It is proposed for amendment to delete the specificity of requiring specifications only to meet the actual minimum needs of NJ TRANSIT without reference to brand names and to add language that the specifications must permit full and free competition.

N.J.A.C. 16:72-1.9 sets forth the requirements for a purchase description when it is used where a specification is not feasible. It is proposed for amendment to delete subsections (c) and (d), as being redundant statements regarding the use of “brand name or equal.” Recodified subsection (c) is proposed for amendment to add “bidders” to the statement that if a brand name or equal is used, prospective “bidders” must be given the opportunity to offer other products that meet NJ TRANSIT needs.

N.J.A.C. 16:72-1.10 is proposed for amendment to reflect changes in the entity with which out-of-State vendors need to register and to include firms that may not be corporations. This section has been updated to replace the Secretary of State with the Division of Revenue and Enterprise Services, as the entity with which out-of-State firms must register. The term “corporation” has been deleted and replaced with “vendors” to recognize that some out-of-State firms may not be corporations, but the firm must still register.

Proposed new N.J.A.C. 16:72-1.11 sets forth the standards for the release of public information in bids or proposals submitted in response to a solicitation.

The heading for Subchapter 2 is proposed for amendment to change the heading of the subchapter to “Procedures for Invitation for Bid (IFB)” to reflect the formal name of the solicitation document.

N.J.A.C. 16:72-2.1 is proposed for amendment to delete the requirement that an advertisement for bids be placed a minimum of 20 calendar days in advance of the bid opening.

N.J.A.C. 16:72-2.2, governing bid bonds, is proposed for amendment to specifically state that the surety company must be licensed by the New Jersey Department of Banking and Insurance and “authorized” by the U.S. Treasury pursuant to U.S. Treasury Circular 570, deleting the existing language that the firm be “listed in” the Circular.

N.J.A.C. 16:72-2.3 governing performance and payment bonds is proposed for amendment with changes to subsection (a) and (c), deleting the ability of the waiver of a bond if the contract is for a sum not exceeding \$200,000, and replacing it with a waiver “consistent with N.J.S.A. 2A:44-143” to maintain continuity with any future statutory changes. Subsection (c) is proposed for amendment to replace the term “State” with “NJ TRANSIT,” as the entity evaluating the risk in waiving the bond requirement. Subsection (e) is proposed for amendment to include the requirement that the surety company must also be licensed by the New Jersey Department of Banking and Insurance and “authorized” by the U.S. Treasury pursuant to U.S. Treasury Circular 570, deleting the previous language that the firm be “listed in” the Circular.

N.J.A.C. 16:72-2.5 governs amendments to the Invitation for Bids solicitation documents. The section is proposed for amendment at paragraph (a)1 to include the option of making amendments “available online.” Subsection (b) is proposed for amendment to delete the language concerning the type of information that must be included in an amendment to require that any information given to a prospective bidder be furnished in an amendment to all other prospective bidders or made available online.

N.J.A.C. 16:72-2.6 provides for the cancellation of IFBs before opening. Subsection (a) is proposed for amendment to reference NJ TRANSIT’s “best” interest as the basis for cancellation of bids and the deletion of specific examples, as the current list does not represent an exhaustive list of reasons for which cancellation may be appropriate.

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Subsection (b) is proposed for amendment to include the option of making the notice of cancellation available online.

N.J.A.C. 16:72-2.7 provides for the time of bid submission. It is proposed for amendment to delete the requirement that bids must be timely submitted "in the office or by the electronic portal" and state that bids must be submitted "as designated" in the IFB.

N.J.A.C. 16:72-2.8 provides for the receipt and safeguarding of bids. Subsection (a) is proposed for amendment to change the reference to a bidder withdrawing "his" bid to a bidder withdrawing "a" bid.

N.J.A.C. 16:72-2.12 provides for the rejection of all bids. It is proposed for amendment to change the heading of this section from "Rejection of all bids" to "Cancellation of bids after opening" to more accurately reflect the standards set forth in the section. Paragraph (a)7 is proposed for amendment to change "best interests" to "best interest."

N.J.A.C. 16:72-2.14 provides for the by-pass of low bidders. It is proposed for amendment to specifically state that if a low bidder is bypassed, the letter explaining that decision will be forwarded to that "low" bidder. The existing language did not indicate that the decision was forwarded to the "low bidder," just that it would be sent to the "bidder."

N.J.A.C. 16:72-2.15 provides for mathematical calculations in bids. Subsection (a) is proposed for amendment to delete the language about a bid being "read" after opening.

N.J.A.C. 16:72-2.16 provides for the initialing of price changes in bids. It is proposed for amendment to include the option of an electronic signature for a price change, as well as the initialing of the change.

N.J.A.C. 16:72-2.17 provides for the waiver of minor informalities or irregularities in bids. Paragraphs (a)1 and 2 are proposed for deletion, in an attempt to summarize the state of the law on waiver of bid irregularities. The main statement remains and can accommodate any evolution or update in case law or statutory requirements regarding bid irregularities.

N.J.A.C. 16:72-2.18 governs tie bids. It is proposed for amendment to add "and" between paragraphs (a)1 and 2 to clarify that it is an inclusive list and, at subsection (b), with the elimination of a coin toss to decide a tie bid in favor of a reference to the tie-breaking criteria listed in the solicitation document.

N.J.A.C. 16:72-2.19 governs bid errors. It is proposed for amendment to delete the language allowing "additions" to the bid in paragraph (a)1 and to delete paragraph (a)2, which allowed correction of material mistakes of fact. Paragraph (a)4 is proposed for deletion since it did not clearly state the possibility of clarification of a bid.

N.J.A.C. 16:72-2.20 provides for the award of the contract to a bidder. It is proposed for amendment to reorganize the subsections, to result in existing subsection (a) to become new subsection (b) and current subsection (b) to become new subsection (a). Recodified subsection (a) is proposed for amendment to add design-build project language and replace language concerning minority and other equal opportunity and affirmative action programs with the current program names of "Disadvantaged Business Enterprise or Small Business Enterprise" programs.

The heading of Subchapter 3, Requests for Proposals, is proposed for amendment to add the acronym "RFP."

N.J.A.C. 16:72-3.1 provides for the solicitation of proposals. It is proposed for amendment to delete limiting proposals for "professional and technical" services and including solicitation of proposals for goods and services to comport with the proposed amendment to N.J.A.C. 16:72-1.5(c).

N.J.A.C. 16:72-3.3 governs the amendment of requests for proposals. It is proposed for amendment to add the acronym "RFP," where appropriate, and to add the option, at subsection (a), for the RFP amendment to "be made available online." The proposed amendment to subsection (a) also deletes the requirement that the RFP amendment be sent to everyone to whom an RFP has been furnished, instead requiring that it only be provided to those furnished the RFP by NJ TRANSIT, since NJ TRANSIT cannot know if the RFP was forwarded by recipients to other firms. The proposed amendment to subsection (b) deletes the phrase limiting an RFP amendment to certain types of information and makes any information provided to a proposer to be included in an RFP amendment furnished to all other prospective proposers and adds the option that RFP amendment be made available online.

N.J.A.C. 16:72-3.4 governs the cancellation of requests before opening. It is proposed for amendment to clarify that the cancellation

needs to be in NJ TRANSIT's "best" interest and to add the option to permit the notice of cancellation to be made available online. The proposed amendment deletes the specific examples of reasons for cancellation and clarifies that the notice will be sent to those to whom the RFP was furnished and not "issued."

N.J.A.C. 16:72-3.10 provides for the rejection of individual proposals. Subsection (a) is proposed for replacement to clarify that a proposal that fails to meet a mandatory material requirement shall be deemed non-responsive and subsection (b) is proposed for amendment to clarify that proposals received from any firm determined to be not responsible shall be removed from consideration for award.

N.J.A.C. 16:72-3.12 provides for the award of an RFP. It is proposed for amendment to delete the award criteria of "in the best interest of NJ TRANSIT" to reflect the statutory award criteria of "the most advantageous to the State, price and other factors considered, and/or provides the best value pursuant to the governing law applicable to the RFP."

Proposed new Subchapter 4 governs design-build projects.

Proposed new N.J.A.C. 16:72-4.1 governs the solicitation of design-build projects. Subsection (a) permits design-build projects to be solicited by the issuance of an Invitation for Bid or a request for proposal. Subsection (b) includes permissible language governing the solicitation of design-build projects, including essential project requirements, evaluation criteria, contract award, and the process to modify or substitute design-build team members. Subsection (c) permits NJ TRANSIT to offer stipends to certain unsuccessful bidders/proposers in a two-step design-build evaluation process to, among other things, encourage participation and offset some of the costs for developing preliminary designs. Subsection (d) indicates that a special prequalification process may also be used by NJ TRANSIT in a two-step evaluation process.

Proposed new N.J.A.C. 16:72-4.2 governs the evaluation of design-build projects. The proposed new section sets forth two options for evaluation of design-build projects: a one-step evaluation process or a two-step evaluation process to be set forth in design-build solicitations and permits a special prequalification process.

Recodified Subchapter 5 governs debarment, suspension, and disqualification.

Proposed new N.J.A.C. 16:72-5.1 clarifies that Subchapter 5 applies to all contracts awarded by NJ TRANSIT.

Recodified N.J.A.C. 16:72-5.2 provides for the causes for debarment of a person(s). The reference to the Executive Commission on Ethical Standards has been replaced with the current entity, the State Ethics Commission at paragraphs (a)15 and 16. Language has been added to paragraph (a)16 replacing "the undertaking" with more specific language regarding the "failure of a vendor to report in writing forthwith or failure to obtain a waiver from the State Ethics Commission, who may undertake" any business relationship with a State officer. References to "his" official capacity in paragraphs (a)17 and 18 have been replaced with "his or her" official capacity and the conjunction "or" has been added after the penultimate paragraph (a)17 to indicate that any of the grounds included in this subchapter can be the basis for a debarment.

Subsection (b) is proposed for amendment to reflect that the causes for debarment in paragraphs (a)14 through 18 do not have to be reproduced in all the IFBs or RFPs issued by NJ TRANSIT but can be referenced therein.

Recodified N.J.A.C. 16:72-5.3 delineates the conditions affecting the debarment of a person(s). Paragraph (a)1 is proposed for amendment to add "his or her designee" of the Executive Director as the person who can approve the debarment of a person. Paragraph (a)2 is proposed for amendment to replace the best interests of the "State" with those of NJ TRANSIT.

Recodified N.J.A.C. 16:72-5.4 provides the procedures, period of debarment, and scope. Paragraph (a)1 is proposed for amendment to change the pronoun from "his" affiliates to "his or her" affiliates for those entities that may be included in the debarment of a person. Paragraph (a)4 is proposed for amendment to add the pronouns "her" and the subject "she" to the masculine "he" and "his," respectively.

Recodified N.J.A.C. 16:72-5.5 provides the causes for suspension of a person(s). It is proposed for amendment to change the basis for suspension

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from “reasonable suspicion” to “adequate evidence” to reflect the standard in N.J.A.C. 16:72-5.6(a)3.

Recodified N.J.A.C. 16:72-5.6 governs the conditions for suspension of a person(s). Paragraph (a)2 is proposed for amendment to change suspension being rendered in the best interest of the “State” to reflect suspension in the best interest of NJ TRANSIT and paragraph (a)3 is proposed for amendment to delete language that permitted a suspension to be based upon evidence adequate to create a reasonable suspicion that a cause for suspension exists.

Recodified N.J.A.C. 16:72-5.7 governs procedures, period of suspension, and scope of suspension affecting the suspension of a person(s). Paragraph (a)1 is proposed for amendment to change the reference to a person or “his” affiliates to reflect a person or “his or her” affiliates. Paragraph (a)3 is proposed for amendment to add the pronoun “or her” to the language concerning imputing the performance to a person with whom “he” is affiliated and adding “or she” as a subject to the masculine “he.”

Recodified N.J.A.C. 16:72-5.9 governs the extent of debarment, suspension, or disqualification. It is proposed for amendment to clarify that the timing of the filing of a copy of the exception from NJ TRANSIT contracting must be filed with the Attorney General.

Proposed new Subchapter 6 establishes a procedure for NJ TRANSIT contract users to file complaints against contractors for poor performance of NJ TRANSIT contracts.

Proposed new N.J.A.C. 16:72-6.1 sets forth the purpose and scope of the new contractor complaint procedure in Subchapter 6.

Proposed new N.J.A.C. 16:72-6.2 describes the general purpose of new Subchapter 6 as setting forth a process for the filing of a complaint by NJ TRANSIT contract users against a contractor for poor performance and a process for prompt action upon that complaint.

Proposed new N.J.A.C. 16:72-6.3 requires complaints to be filed in writing and set forth examples of contract breaches that may be reported. It further provides that if the underlying contract has specific performance standards, such as liquidated damages, complaints are not required.

Proposed new N.J.A.C. 16:72-6.4 sets forth the time frames and procedure that follow the filing of a complaint. It requires written notice to the contractor, a 10-business-day contractor response time, and the opportunity for cure or a corrective action plan from the contractor during the 10-day period, which may be taken into consideration in resolving the complaint. NJ TRANSIT may respond to the contractor’s reply and an initial determination will be issued to the contractor, which he or she may appeal to the Chief Procurement Officer’s designee.

Proposed new N.J.A.C. 16:72-6.5 sets forth the actions to be taken by the Chief Procurement Officer (Chief), or designee, upon the filing of an appeal by the contractor. Specifically, in an informal hearing, the Chief will review the written record and any applicable administrative rules, statutes, and case law and may permit an in-person presentation. The determination rendered thereafter by the Chief will constitute a final agency decision for purposes of the Administrative Procedure Act, but will not preclude NJ TRANSIT from pursuing any other remedies for the contract breach.

Proposed new N.J.A.C. 16:72-6.6 permits NJ TRANSIT to reject goods or services that are substantially defective, notwithstanding any of the proposed new provisions in Subchapter 6.

Proposed new N.J.A.C. 16:72-6.7 governs emergency situations wherein NJ TRANSIT can immediately seek to obtain full contractor compliance where its non-compliance affects health or safety or jeopardizes NJ TRANSIT assets, and, if there is no resolution, NJ TRANSIT can engage another contractor for those goods or services and charge any additional costs to the original contractor.

Proposed new N.J.A.C. 16:72-6.8(a) permits NJ TRANSIT to terminate the contract and secure goods and services from a substitute contractor with any additional costs charged to the non-complying contractor. Proposed new subsection (b) permits NJ TRANSIT to suspend or debar a contractor for continued, or willful, failure to perform.

Proposed new N.J.A.C. 16:72-6.9 sets forth the discovery procedures applicable upon the filing of a complaint. It requires the contractor to promptly provide any requested records and documents to NJ TRANSIT free of charge upon request by NJ TRANSIT. If the contractor fails to comply with the request, the complaint may be resolved against it and/or

be used to prove non-compliance and such non-compliance may be the basis for NJ TRANSIT to seek further contract remedies.

Proposed new N.J.A.C. 16:72-6.10 requires complaints against a Disadvantaged Business Enterprise in a Federally funded procurement to follow an alternate procedure consistent with 49 CFR Part 26.

As NJ TRANSIT has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments and new rules will continue to affect NJ TRANSIT’s ability to provide Statewide transit services to the public on a daily basis and to continue NJ TRANSIT’s capital improvement program, resulting in a better quality of services to the public and the improvement and maintenance of the infrastructure for the public’s use in the future. The procedures delineated in the rules provide protection of the interests of the general public and of the individual bidders.

Economic Impact

The continued utilization of a competitive bidding system can be expected to provide economies to the State that are not available without such a system. Bonding is required of certain bidders, based upon the specific contract. Although the cost of a bond may be included by a bidder in its bid price, the protection offered to the State from bid bonds, performance bonds, and payment bonds is outweighed in a potential higher bid price. The costs of preparing a bid or proposal would vary, depending upon the specifications of the individual request for proposals and upon the specific contract. These rules are designed to endorse and promote high quality and efficient public transportation, thereby supporting employment of New Jersey residents by assisting with travel to and from places of employment.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments and new rules are governed by N.J.S.A. 27:25-11 and are not subject to any Federal procurement regulations or standards. To the extent that a complaint is filed against a Disadvantaged Business Enterprise in a Federally funded procurement, an alternate procedure consistent with the Federal regulations is required.

Job Impact

NJ TRANSIT anticipates only favorable impact on the workforce in the State by the rules proposed for readoption with amendments and new rules. NJ TRANSIT will continue to provide opportunities for vendors to compete for goods and services contracts and such contracts will enable businesses to employ New Jersey citizens to perform the contract requirements.

Agriculture Industry Impact

The rules proposed for readoption with amendments and new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and new rules apply to all entities who want to do business with NJ TRANSIT, some of which may be small businesses, as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules require that bids be submitted in a specified manner, accompanied by bonds in certain cases, and that debarment occur in specified situations. Provisions in the rules allow for amendment and negotiation of bids, but no preferential treatment has been specifically provided for small businesses. In accordance with New Jersey’s Small Business Set Aside Program, NJ TRANSIT sets goals and creates set-asides for Small Business Enterprises (SBEs) certified by the State, as set forth in N.J.A.C. 17:13 and/or 14. Whether an SBE goal or set-aside is created, whether the business is large or small, the rules provide for equal treatment of businesses in the bidding process in the interest of high quality goods and services and fairness to all bidders. The professional services required to complete the bidding process are those services ordinarily required for the completion of any capital project, for example, engineering and design services. Other professional services would vary, depending upon the specifications of the individual request for proposals. The costs of professional services

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will vary, depending upon the specifications of the individual request for proposals. The costs of complying with the rules are discussed in the Economic Impact statement.

Housing Affordability Impact Analysis

NJ TRANSIT does not anticipate any impact on the affordability of housing in New Jersey or on the average costs of housing as result of the rules proposed for readoption with amendments and new rules because the rules pertain to an efficient and robust procurement process for the bidding community. However, NJ TRANSIT provides bus, rail, light rail, and Access Link services throughout the State, which allows residents flexibility of choice for their place of residence.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and new rules will have no impact on the achievement of smart growth or on housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because the procurement rules affected herein are limited to ensuring a competitive bid process for the bidding community.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

NJ TRANSIT has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:72.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

16:72-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Bidder” or “proposer” means any person, firm, corporation, or other entity that provides, or offers or proposes to provide, goods or services to, or performs, any contract for NJ TRANSIT.

“Chief Procurement Officer” means the person responsible for the management and administration of the procurement, purchasing, materials management, and central intake for NJ TRANSIT.

“Design-build (DB)” means a design-build project in which one single entity performs the design and construction for the project. The design-build firm may be a single firm, a joint venture, a general contractor, or a joint venture and an architect/engineer team.

“Design-build-finance-operate and maintain (DBFOM)” means a design-build project in which one single entity provides the financing, or a part thereof, for the project and performs the design and construction of a project, operates the project, and maintains the project for a specified period of time, all under one contract. The DBFOM may be a single firm, a joint venture, or a general contractor, or a joint venture and an architect/engineer team.

“Design-build project” means:

1. A project under which NJ TRANSIT enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system or an operable segment of such system; and

2. May include an option to finance, or operate and maintain for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

In addition, “design-build project” also means a construction project under which NJ TRANSIT enters into a contract with a firm, or consortium of firms, both to design and construct a public transportation facility that is the subject of the project.

“Design-build-operate and maintain (DBOM)” means a design-build project in which one single entity performs the design and construction of a project, operates the project, and maintains the

project for a specified period of time all under one contract. The DBOM may be a single firm, a joint venture, a general contractor, or joint venture and an architect/engineer team.

“Line item” means a procurement item specified in the [Invitation for Bids] solicitation for which the bidder is asked to give individual pricing information.

“Procurement” means the awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, goods, or for rendering any services to NJ TRANSIT. “Procurement” shall include contracts that are awarded after advertisement, or other competitive process, as well as contracts that are awarded pursuant to N.J.A.C. 16:72-1.5(e) (procurement-by-exception).

“Procurement-by-exception” means a form of procurement in which the subject matter is excepted from the requirement of public advertisement.

“Publicly available,” with respect to any procurement, either in printed or electronic format, means access to the record of any particular procurement or contract for review and/or copying, with the exception of any materials deemed by NJ TRANSIT to be proprietary, confidential, or subject to any privilege, or exclusion under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the common law, and/or U.S. copyright law.

16:72-1.4 Responsible contractors

(a) Procurements shall be made from, and contracts shall be awarded to, responsible contractors only. A responsible contractor is one who meets the following standards:

1. Has adequate financial resources, or the presently demonstrable ability to obtain such resources, as required during the performance of the contract[, if adequate security is not otherwise furnished];

2.-3. (No change.)

4. Has a satisfactory record [and reputation] of integrity;

5.-7. (No change.)

(b) (No change.)

(c) A prospective contractor [shall] may be deemed not responsible with respect to a specific matter for which bids are solicited when NJ TRANSIT has previously held it in default on a contract for that matter. In order to determine if a prospective contractor should be determined to be not responsible based on a previous contract default, the circumstances surrounding the default will be considered.

(d) (No change.)

(e) Disclosure shall be made by all prospective contractors consistent with, and pursuant to, N.J.S.A. 52:25-24.2 of names and addresses of all owners, members, stockholders, and/or partners holding 10 percent or more interest in the firm.

16:72-1.5 Methods of procurement

(a) Invitation for [bid] Bid: Except as provided in (c) and (d) below, the formal advertising procedures contained in N.J.A.C. 16:72-2 shall be followed for all purchases or contracts in excess of the amounts determined pursuant to Section 2 of P.L. 1954, [c.48] c. 48 (N.J.S.A. 52:34-7) in which an award is made on the basis of cost, no negotiations are necessary with the bidders, and a firm-fixed priced contract is appropriate.

(b) Quotation: [Except as provided in (c) and (d) below, purchases] Purchases or contracts not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, [c.48] c. 48 (N.J.S.A. 52:34-7) shall be made[:] in accordance with the process published by the New Jersey Department of the Treasury, Circular No. 16-02-DPP, as amended and supplemented.

[1. For purchases up to and including \$5,000—minimum of one quote;

2. For purchases from \$5,001 up to and including \$15,000—minimum of two verbal quotes; and

3. For purchases from \$15,001 up to the amount determined in (a) above—minimum of two written quotes.] (c) Request for [proposals/negotiations] proposals: The procurement of [professional] goods and [technical] services in excess of the amounts determined pursuant to Section 2 of P.L. 1954, [c.48] c. 48 (N.J.S.A.

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52:34-7), which will not be evaluated based solely on cost, shall be accomplished through the issuance of [a] **an advertised** request for proposal **or, for professional and technical services**, to a minimum of three vendors [and subsequent negotiation except], **or** where determined by the Executive Director, or his or her designee, in writing, that an alternative method of procurement is in NJ TRANSIT's best interest.

(d) An alternate method of advertised procurement may be used when the Executive Director, or his or her designee, determines in writing, that the alternative method is in NJ TRANSIT's best interest.

[(d)] **(e) Procurement-by-exception:** The requirements of (a), (b), and (c) above may be waived under the following circumstances and the purchase or contract made in such manner as the Executive Director, or his or her designee, may determine is in the best interest of NJ TRANSIT:

1.-12. (No change.)

13. The procurement of services to be performed by the contractor personally under the supervision of the Executive Director, or his or her designee, and paid for on a [time] **timely** basis; [and]

14. To acquire or overhaul motorbuses, light rail vehicles, rail cars, locomotives, signal systems, or fare collection systems[.]; **and**

15. To acquire goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by Federal funds awarded by the U.S. Department of Homeland Security or other Federal agency, from vendors that:

i. Are holders of a current State contract for the equipment, goods, or services sought;

ii. Are participating in a Federal procurement program established by a Federal department or agency; or

iii. Have been approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force.

(f) For any procurement, for which negotiation is authorized, the Executive Director, or his or her designee, may negotiate with bidders or proposers, the final terms and conditions of any contract, including price. Such ability to so negotiate shall be expressly set forth in the applicable request for proposal, or other solicitation, and submitted proposals or bids shall not be publicly accessible until after negotiations have been completed and the notice of intent to award the contract has been issued.

[(e)] **(g) Authority for procurement-by-exception:** The authority for procurement under the circumstances listed in (e) above rests with the Executive Director, or his or her designee, for procurement transactions not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7). Transactions in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7) will require approval as may be set forth in the By-Laws of NJ TRANSIT.

(h) NJ TRANSIT may purchase through, or from, a Federal supply schedule or through other Federal procurement programs, including, but not limited to, online ordering systems, or through, or from, vendors who hold contracts with other states, or multistate authorities, or other governmental entities to operate:

1. Rail passenger service or portions or functions thereof; or

2. Motorbus regular route, paratransit, or motorbus charter services or portions or functions thereof.

(i) NJ TRANSIT may participate in cooperative purchasing to support its operations or capital program by purchasing from a contract that was publicly competed by a public or non-profit entity.

[(f)] **(j) (No change in text.)**

16:72-1.7 Execution of contracts

Any contract or instrument shall be deemed properly executed when signed by the Executive Director [of NJ TRANSIT], or his or her designee. No contract or purchase order shall be entered into unless all applicable requirements of law, [and] this chapter, **and NJ TRANSIT's By-Laws** have been met, and the approval of the Board of NJ TRANSIT obtained, when required.

16:72-1.8 Specifications

Plans, drawings, or specifications shall [state only the actual minimum needs of NJ TRANSIT and describe the work to be performed in a manner which encourages maximum competition and eliminates, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders] **permit full and free competition describing the**

work to be performed. Specifications, plans, and drawings [without reference to brand names or items manufactured by a single company] shall be used to the maximum extent possible.

16:72-1.9 Purchase descriptions

(a)-(b) (No change.)

[(c) Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer, unless it is determined that the particular feature is essential to NJ TRANSIT's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item.

(d) Generally, the minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words "or equal."

[1.] **(c) Where a "brand name or equal" purchase description is used, prospective [contractors] bidders must be given the opportunity to offer products other than those specifically referenced by brand name, if such other products will meet the needs of NJ TRANSIT in essentially the same manner as those referenced.**

16:72-1.10 Out-of-State vendors

All out-of-State [corporations] **vendors** that wish to do business with NJ TRANSIT shall be afforded 10 working days to register with the [Secretary of] State of New Jersey, after notification by NJ TRANSIT of the intent to award that out-of-State firm a contract. Failure to provide either certification or notification of filing with the [Secretary of State] **Division of Revenue and Enterprise Services** within the 10 working-day period may constitute cause for rejection of that firm's bid or proposal.

16:72-1.11 Public information

(a) After a contract is executed, all information submitted in response to a solicitation of proposals or bids is considered public information, notwithstanding any disclaimers to the contrary submitted by a proposer or bidder, except when a request for proposals (RFP) contains a negotiation component or as may be exempted from public disclosure by the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and/or the common law. As a part of its proposal, each proposer or bidder may identify any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. Assertions that the entire bid or proposal, and/or prices contained therein, are exempt from public disclosure under OPRA, the common law, or the U.S. Copyright Act are overbroad and will not be honored by NJ TRANSIT. In the event that a public request is made for materials that the proposer or bidder has identified as confidential, NJ TRANSIT shall have the final authority to determine whether the materials are exempt from public disclosure under OPRA and shall take action as required by applicable law. The proposer or bidder may elect to defend its assertion of exemption from the public disclosure requirements of OPRA or the common law, but in doing so, all costs and expenses associated therewith shall be the responsibility of the bidder or contractor. NJ TRANSIT assumes no such responsibility or liability.

(b) When a solicitation permits negotiation with proposers or bidders after the submission of proposals or bids, the proposals or bids shall be made publicly available only after a contract is executed.

SUBCHAPTER 2. [BIDDING] PROCEDURES FOR INVITATION FOR BID (IFB)

16:72-2.1 Advertising of bids

The advertisement for bids shall be placed in such newspaper or newspapers selected by NJ TRANSIT that will give best notice thereof to bidders and will be posted on NJ TRANSIT's website. Advertisements shall be made [a minimum of 20 calendar days] in advance of the bid opening. The advertisement shall designate the time and place, when and where sealed bids shall be received and publicly opened and read, or whether bids shall be received electronically, and such other terms as NJ TRANSIT may deem proper.

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16:72-2.2 Bid bonds

A bid bond or a deposit consisting of a cashier's check, certified check, or irrevocable letter of credit drawn to the order of NJ TRANSIT in an amount to be determined by NJ TRANSIT, but not exceeding 10 percent of the bid, shall accompany all bids to serve as a guarantee that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within 10 working days after issuance of a notice of intent to award. Any bonds submitted pursuant to this section must be executed by surety companies licensed to do business in the State of New Jersey and licensed by the New Jersey Department of Banking and Insurance, in compliance with the New Jersey Producer Licensing Act of 2001, P.L. 2001, c. 210, as amended, and [listed in] authorized by the U.S. Department of the Treasury, pursuant to Circular 570 as of the date of receipt of bids. Any letters of credit shall be issued by Federally insured financial institutions.

16:72-2.3 Performance and payment bonds

(a) In accordance with N.J.S.A. 2A:44-143 [as amended], a performance bond not to exceed 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to secure fulfillment of the contractor's obligations specified in the contract. The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to the State by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement [entirely if the contract is for a sum not exceeding \$200,000] consistent with N.J.S.A. 2A:44-143. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:

1.-3. (No change.)

(b) (No change.)

(c) In accordance with N.J.S.A. 2A:44-143 [as amended], a payment bond not to exceed 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to protect firms or persons supplying labor or materials to the contractor/subcontractor for the performance of work provided for in the contract. The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to [the State] NJ TRANSIT by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement [entirely if the contract is for a sum not exceeding \$200,000] consistent with N.J.S.A. 2A:44-143. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:

1.-3. (No change.)

(d) (No change.)

(e) Performance and payment bonds must be executed by surety companies licensed to do business in the State of New Jersey and licensed by the New Jersey Department of Banking and Insurance, in compliance with the New Jersey Producer Licensing Act of 2001, P.L. 2001, c. 210, as amended, and [listed in] authorized by the U.S. Department of the Treasury [Department] pursuant to Circular 570.

16:72-2.5 Amendment of Invitation for Bids

(a) If, after issuance of an Invitation for Bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous Invitation for Bid, such changes shall be accomplished by issuance of an amendment to the Invitation for Bids.

1. The amendment shall be sent to everyone to whom Invitations for Bids have been furnished or made available online.

2. (No change.)

(b) Any information given to a prospective bidder concerning an Invitation for Bids shall be furnished promptly [to all other prospective bidders, as an amendment to the Invitation, if such information is necessary to the bidders in submitting bids on the Invitation or if the lack of such information would be prejudicial to uninformed bidders] as an amendment to the Invitation for Bids to all other prospective bidders or made available online.

16:72-2.6 Cancellation of Invitations for Bids before opening

(a) Invitations for Bids should not be cancelled, unless cancellation is in NJ TRANSIT's best interest[, such as where there is no longer a requirement for the supplies or services or where amendments to the Invitation would be of such magnitude that a new Invitation is desirable].

(b) Where an Invitation for Bid is cancelled, bids [which] that have been received shall be returned, unopened, to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom Invitations for Bids were issued or made available online.

16:72-2.7 Time of bid submission

Bids shall be submitted, so as to be received [in the office or by the electronic portal] as designated in the Invitation for Bids not later than the exact time set for opening of bids.

16:72-2.8 Receipt and safeguarding of bids

(a) All bids received prior to the time of opening shall be kept secure, and, except as provided in (b) below, unopened. If an Invitation for Bids is cancelled, or if a bidder effectively withdraws [his] a bid prior to the time set for opening of bids, all bids, or the withdrawn bid, as the case may be, shall be returned to the bidders.

(b) (No change.)

16:72-2.12 [Rejection] Cancellation of [all] bids after opening

(a) Invitations for Bids may be cancelled after opening but prior to award and all bids rejected, where NJ TRANSIT determines that:

1.-6. (No change.)

7. For other reasons, cancellation is in the best interest[s] of NJ TRANSIT.

(b) (No change.)

16:72-2.14 By-pass of low bidders

If the low bidder is by-passed, a memorandum stating the justification shall be prepared for the file and a letter explaining the decision shall be forwarded to the low bidder.

16:72-2.15 Mathematical calculations

(a) After the bids are opened [and read], they shall be compared on the basis of the correctly determined summation of the correctly determined products of all the quantities for contract line items shown in the bid multiplied by the unit prices bid. The results of such comparisons shall be made available to the public. Award shall be made on the basis of the correct total contract price.

(b) (No change.)

16:72-2.16 Initialing of price changes

Price changes in bids shall be initialed or signed electronically by the vendor in the bid submitted to NJ TRANSIT.

16:72-2.17 Waiver of minor informalities or irregularities in bids

[a)] NJ TRANSIT reserves the right to waive any minor informalities or irregularities in a bid not in compliance with the specifications, terms, and conditions of the Invitation for Bids.

[1. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the Invitation for Bids, having no effect on quality, quantity or delivery of the supplies or performance of work being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, other bidders.

2. NJ TRANSIT may give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or may waive any such deficiency where it is to the advantage of NJ TRANSIT.]

16:72-2.18 Tie bids

(a) In the event that the correct total contract prices submitted by two or more vendors are identical, NJ TRANSIT shall award the contract based on a relative comparison of the following factors:

1. Delivery advantage, considering time, distance, convenience, and facilities of vendor; and

2. (No change.)

(b) When none of the distinguishable characteristics in (a) above are available, NJ TRANSIT shall, if practicable, provide for contract award

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by splitting the award. If splitting the award is not practicable, the award will be made [by a single toss of a coin] **according to the tie-breaking criteria in the solicitation document.**

16:72-2.19 Bid errors

(a) While bidders normally shall be expected to be bound by their bids, circumstances exist where correction or withdrawal of bids is permitted.

1. A bidder shall not be permitted to correct a bid mistake after bid opening that would cause the bidder to have the low bid, unless the mistake is clearly evident from examining the bid document, [e.g.] **for example, clerical errors in extensions [and additions].**

[2. The apparent low bidder shall be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document. Such bidder shall not be permitted to correct a bid for mistakes or errors in judgment.]

[3.] **2.** (No change in text.)

[4. An otherwise low bidder shall not be permitted to withdraw material exceptions to the bid conditions or specifications; however, such bidder may be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.]

[5.] **3.** (No change in text.)

16:72-2.20 Award

[(a) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to NJ TRANSIT, price and other factors considered, for contracts other than contracts for the construction or improvement of capital facilities.]

[(b)] **(a) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid or extension thereof, to the lowest responsible bidder for contracts for the construction or improvement of capital facilities. This provision shall not apply to any design-build project, including design, build or design, build, maintain and operate, or design, build, maintain, operate, and finance projects, or affect NJ TRANSIT's [minority and women business enterprise, equal employment opportunity or affirmative action] Disadvantaged Business Enterprise or Small Business Enterprise programs or limit NJ TRANSIT's right to extend, add, or resume work on any project.**

(b) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid, or extension thereof, to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to NJ TRANSIT, price and other factors considered, for contracts other than contracts for the construction or improvement of capital facilities to which (a) above applies.

(c) (No change.)

SUBCHAPTER 3. REQUESTS FOR PROPOSALS (RFPs)

16:72-3.1 Solicitation of proposals

Proposals for [professional] **goods** and [technical] services shall be solicited in a manner [which] **that** maximizes the opportunity for competition, unless otherwise provided in N.J.A.C. 16:72-1.5(c).

16:72-3.3 Amendment of request for proposals

(a) If after issuance of a request for proposals (RFP), but before the time of receipt, it becomes necessary to make changes in scope, delivery deadline, closing dates, or any other part of the [proposal] RFP, or to correct a defective or ambiguous RFP, such changes shall be accomplished by issuance of an amendment of the RFP. The amendment shall be **made available online** or sent to everyone to whom [RFPs have been] **NJ TRANSIT has furnished the RFP.**

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP [if such information is necessary to the proposers in submitting proposals on the RFP or if the lack of such information would be prejudicial to uninformed proposers] **or made available online or sent to everyone to whom NJ TRANSIT has furnished the RFP.**

16:72-3.4 Cancellation of requests before opening

[(a)] Requests for [Proposals] **proposals (RFPs)** should not be cancelled, unless cancellation is in NJ TRANSIT's **best interest**[, such as where there is no longer a requirement for the services or where amendments to the RFP would be of such magnitude that a new RFP is desirable]. [1.] Where an RFP is cancelled, proposals [which] **that** have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were [issued] **furnished by NJ TRANSIT or be made available online.** The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:72-3.10 Rejection of individual proposals

(a) Any proposal [which materially] **that** fails to [conform to the] **meet a mandatory material** requirement[s] of the RFP[']s shall be [rejected] **deemed non-responsive.**

(b) [Proposals] **Any proposal** received from a firm[s] determined to be not responsible shall be [rejected] **removed from consideration for award.**

16:72-3.12 Award

Unless all proposals are rejected, award shall be made to that responsible proposer whose proposal, conforming to the [Request for Proposals] **request for proposals**, is [in the best interest of NJ TRANSIT] **the most advantageous to the State, price and other factors considered, and/or provides the best value pursuant to the governing law applicable to the RFP.**

SUBCHAPTER 4. DESIGN-BUILD PROJECTS

16:72-4.1 Solicitation of design-build projects

(a) **The solicitation of design-build projects may be by the issuance of an Invitation for Bid or a request for proposal, depending on the requirements of the specific project.**

(b) **As part of the solicitation for design-build projects, NJ TRANSIT may prescribe:**

1. **In the solicitation documents, essential project requirements in performance terms;**

2. **Criteria by which proposals will be evaluated by NJ TRANSIT;**

3. **The process that leads to contract award for design and construction services and, where applicable, maintenance and operation and finance of a project based on a firm schedule required by NJ TRANSIT; and**

4. **That members of a design-build team presented by the firm selected for award may be modified or substituted after the evaluation procedure is completed, but new or substituted members must be submitted to NJ TRANSIT prior to the execution of the contract, with supporting information as required by NJ TRANSIT. A prospective contractor will not be permitted to execute the contract with NJ TRANSIT until NJ TRANSIT deems the new or substituted member qualified. No modifications or substitutions to the design-build team will be permitted beyond execution of the contract for work and completion of design, except for exigent circumstances beyond the control of the contractor within the discretion of NJ TRANSIT.**

(c) **NJ TRANSIT may, within its discretion, depending upon the complexity and size of the project, prescribe payment of a lump sum stipend to those bidders/proposers, with satisfactory qualifications and a demonstrated technically satisfactory approach deemed to be within the competitive range of a two-step procurement process in order to:**

1. **Encourage quality teams to participate;**

2. **Provide some modicum of financial relief to offset costs of developing a preliminary design;**

3. **Motivate firms to achieve innovations and adequately develop designs and a competitive bid price;**

4. **Any bidder/proposer that accepts a stipend shall transfer all ownership and rights in the bidder's/proposer's design to NJ TRANSIT for use in this project. No stipend shall be paid to the firm that is awarded and executes a contract for the project. In order for a bidder/proposer to receive payment of a stipend, the**

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bidder/proposer must have submitted a responsive and responsible complete proposal, including price. The NJ TRANSIT Board of Directors may prescribe limits as to the amount of the stipend to be paid to each bidder/proposer qualified to participate in the second stage, depending upon the size and complexity of the project and may limit the number of stipends to be paid per design-build contract.

(d) Notwithstanding the two-step solicitation process, NJ TRANSIT may also utilize a special prequalification process before the first step begins.

16:72-4.2 Evaluation for design-build projects

(a) NJ TRANSIT may solicit bids/proposals for design-build projects and set forth the selection criteria in the solicitation documents, which may include either a one-step or two-step evaluation process depending on the size and complexity of the project.

(b) A one-step process for procuring a particular design-build project will solicit separate qualification and pricing packages and can be awarded, as described in the solicitation, based on either:

1. An award to the lowest priced proposal from a firm meeting the technical qualification requirements of the solicitation; or
2. An award to that firm whose proposal represents the best value, as determined based on a pre-determined combination of technical merit and price elements, which may include price, schedule, and technical approach.

(c) A two-step evaluation process may be stated in the solicitation documents for a particular design-build project that separates the review of the technical proposal from the price as follows:

1. During the first step, the bidders'/proposers' technical qualifications and overall technical approach to the project will be evaluated to determine those firms that fall within the competitive range of satisfactory qualifications and a demonstrated technically satisfactory approach. Those firms in the competitive range will be invited to proceed to the next step; and
2. During the second step, complete technical proposals and price proposals for the project will be solicited and evaluated.

SUBCHAPTER [4.] 5. DEBARMENT, SUSPENSION, AND DISQUALIFICATION OF PERSONS

16:72-5.1 Purpose and scope

The purpose of this subchapter is to set forth the procedures that apply to debarment, suspension, and disqualification of a person or persons from public contracting with NJ TRANSIT. Hearings arising as a result of this subchapter are contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:72-[4.1]5.2 Causes for debarment of a person(s)

(a) In the public interest, NJ TRANSIT shall debar a person for any of the following causes:

- 3. (No change.)
4. Violations of any of the laws governing the conduct of elections of the Federal government, the State of New Jersey, or of its political subdivisions;
5. Violation of the ["Law Against Discrimination"] (P.L.1945], P.L. 1945, [c.169] c. 169, as amended (N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127)], or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, [c.114] c. 114, N.J.S.A. 10:1-10 et seq.);
- 6.-14. (No change.)

15. Failure by a vendor to report to the Attorney General and to the [Executive Commission on Ethical Standards] State Ethics Commission in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any State officer or employee or special State officer or employee;

16. [The undertaking,] Failure by a vendor to report in writing forthwith or failure to obtain a waiver from the State Ethics

Commission, who may undertake, directly or indirectly, of any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract, or other agreement, express or implied, or sale, directly or indirectly of any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by, or to, any State agency or any instrumentality thereof, or with any person, firm, or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-[13g]13.g. Any relationship subject to this [provision] paragraph shall be reported in writing forthwith to the [executive Commission on Ethical Standards] State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

17. Influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner [which] that might tend to impair the objectivity or independence of judgment of said officer or employee; or

18. Cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

(b) The provisions set forth in [N.J.A.C. 16:72-4.1(a)14] (a)14 through 18 above shall be [included] referenced in all Invitations for Bids and RFPs issued by or on behalf of NJ TRANSIT.

16:72-[4.2]5.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Executive Director, or his or her designee, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 16:72-[4.1]5.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Executive Director, unless otherwise required by law, and shall be rendered in the best interest[s] of [the State] NJ TRANSIT.

3. (No change.)

4. The existence of a cause set forth in N.J.A.C. 16:72-[4.1(a)1]5.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 16:72-[4.1(a)9]5.2(a)9 through 18 shall be established by evidence [which] that NJ TRANSIT determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 16:72-[4.1(a)13]5.2(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 16:72-[4.1(a)1]5.2(a)1 through 18 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

16:72-[4.3]5.4 Procedures, period of debarment, and scope

(a) The procedures, the period of debarment, and the scope of debarment to be followed by NJ TRANSIT are explained below:

1. NJ TRANSIT, when seeking to debar a person or his or her affiliates, shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment, and indicating that such party will be afforded an opportunity for a hearing if [he so] the person requests one within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure[s] Act. However, where another department or agency has imposed debarment upon a party, NJ TRANSIT may also impose a similar debarment without affording an opportunity for a hearing, provided that NJ TRANSIT furnishes notice of the proposed similar debarment to that party, and affords that party an

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opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

2.-3. (No change.)

4. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a [case by case] **case-by-case** basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he **or she** is affiliated, where such conduct was accomplished within the course of his **or her** official duty or was affected by him **or her** with the knowledge or approval of such person.

16:72-[4.4]5.5 Causes for suspension of a person(s)

In the public interest, NJ TRANSIT shall suspend a person for any cause specified in N.J.A.C. 16:72-[4.1]5.2 or upon [reasonable suspicion] **adequate evidence** that such cause exists.

16:72-[4.5]5.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. (No change.)

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Executive Director and of the Attorney General, and shall be rendered in the best interest of [the State] **NJ TRANSIT**.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists [or upon evidence adequate to create a reasonable suspicion that cause exists].

4. (No change.)

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 16:72-[4.1(a)]5.2(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 16:72-[4.1]5.2 may be the basis for the imposition of a concurrent suspension by NJ TRANSIT, which may impose such suspension without the approval of the Attorney General.

16:72-[4.6]5.7 Procedures, period of suspension, and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension, and scope of suspension shall be adhered to by NJ TRANSIT.

1. NJ TRANSIT may suspend a person or his **or her** affiliates, provided that within 10 days after the effective date of the suspension, NJ TRANSIT provides such party with a written notice stating that a suspension has been imposed and its effective date; setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed; stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for an informal hearing if [he so] **the person** requests, or a statement declining to give such reasons and setting forth NJ TRANSIT's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by NJ TRANSIT, the latter shall note that fact as a reason for its suspension.

2. (No change.)

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he **or she** is affiliated, where such conduct was accomplished within the course of his **or her** official duty or was effectuated by him **or her** with the knowledge or approval of such person.

16:72-[4.7]5.8 Disqualification of a person(s)

The disqualification of a person shall conform to N.J.S.A. 27:25-1 et seq., and [N.J.A.C. 16:72-1.1 et seq] **this chapter**.

16:72-[4.8]5.9 Extent of debarment, suspension, or disqualification

The exclusion from NJ TRANSIT contracting by virtue of debarment, suspension, or disqualification shall extend to all contracting and subcontracting within the control or jurisdiction of NJ TRANSIT, including any contracts [which] that utilize State funds. When it is determined by the Executive Director to be essential to the public interest, [and upon filing of a finding thereof with the Attorney General,] an exception from total exclusion may be made with respect to a particular NJ TRANSIT contract. **A copy of said exception shall be filed with the Attorney General.**

Recodify existing N.J.A.C. 16:72-4.9, 4.10, and 4.11 as **5.10, 5.11, and 5.12** (No change in text.)

SUBCHAPTER 6. COMPLAINTS

16:72-6.1 Purpose and scope

The purpose of this subchapter is to set forth the procedure for NJ TRANSIT contract users to file complaints related to contracts arising as a result of procurements conducted under the provisions of N.J.S.A. 27:25-11 et seq. If this complaint process is not used, NJ TRANSIT does not waive any of its rights or remedies available at law or in equity.

16:72-6.2 Applicability

The provisions of this subchapter deal specifically with means of assuring prompt action in cases where an NJ TRANSIT employee, by filing a formal complaint, claims that an NJ TRANSIT contractor's performance fails to meet contract requirements, and by establishing a record that documents a contractor's poor performance in cases where a contractor's performance fails to meet contract requirements. NJ TRANSIT may refrain from doing business with any contractor for repeated or excessive breaches of NJ TRANSIT contract terms, including, as necessary, to protect NJ TRANSIT's best interests. NJ TRANSIT may also use a record of contractor poor performance to bypass that contractor as low bidder on an Invitation for Bid or as an evaluation factor in a request for proposal solicitation.

16:72-6.3 Filing of complaints; subject matter

(a) A complaint shall be in writing. Complaints are not required where a contract contains specific performance standards including, but not limited to, liquidated damages. Alleged breaches of contract provisions that may be reported include, but are not limited to:

1. Failure by the contractor to deliver goods or services at the time and place or in the manner, quantity, or quality specified;
2. Demand for prices other than those specified in the contract;
3. Delivery of unauthorized substitutes or ungraded material where grading is required;
4. Sale of goods that are not authorized by the contract;
5. Failure to install goods or improper installation;
6. Any other failure to comply with contract specifications or failure to achieve a satisfactory rating for the service provided under the contract if quality assurance surveys are performed;
7. A conflict of interest; and
8. Failure to comply with any relevant legal or contractual requirement.

16:72-6.4 Time frames

As soon as possible after receipt of the complaint, the Chief Procurement Officer, or his or her designee, will provide written notice to the contractor against which the complaint was filed. Once notified, the contractor must reply to the complaint within 10 business days of the contractor's receipt thereof, or prior to the deadline specified in the notice of complaint, whichever date is earlier. The contractor may cure or submit a corrective action plan for any defects during that period. A cure or corrective action plan may be taken into consideration by the Chief Procurement Officer's designee in determining whether a complaint is to be resolved against the contractor. The contractor shall notify the assigned designee of any cure or corrective action plan effectuated by the contractor. However, such a cure or corrective action plan shall not serve as cause for automatic invalidation of a meritorious complaint. The using

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department may file a response to the submission of the contractor and provide a copy of the using department's response to the contractor. As soon as practicable after receipt of the response provided, the Chief Procurement Officer's designee shall issue an initial determination to the contractor and using department regarding the merits of the complaint. The contractor or using department may file an appeal to the Chief Procurement Officer within 10 business days of receipt of NJ TRANSIT's initial determination or, prior to the deadline specified in the initial determination, whichever date is earlier. If the Chief Procurement Officer finds that a complaint against a contractor is valid, the contractor shall be notified of the time by which corrections are to be made. Any time frame specified in this subchapter may be shortened or extended by the Chief Procurement Officer for good cause. In such instances, the Chief Procurement Officer shall give adequate notice to the parties involved. A pending complaint or an initial determination shall not prevent NJ TRANSIT from exercising any other right or seeking any remedy available at law or in equity.

16:72-6.5 Resolution of complaints

(a) A complaint appealed to the Chief Procurement Officer, or his or her designee, shall be resolved by written decision on the basis of the Chief Procurement Officer's review of the written record including, but not limited to, the complaint and any attachments, the terms, conditions, and requirements of the contract that includes the proposal submitted by the contractor, pertinent administrative rules, statutes, and case law, and any associated documentation the Chief Procurement Officer deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

(b) At the discretion of the Chief Procurement Officer, the using department and/or respondent may be required to make an in-person presentation, which may include an opportunity to submit additional documentation relevant to the issues set forth in the original complaint.

(c) The Chief Procurement Officer, or his or her designee, may perform a review of the written record or conduct an in-person presentation directly. A determination by the Chief Procurement Officer, or his or her designee, shall be a final agency decision, which shall be appealable to the Appellate Division of the Superior Court.

(d) Hearings arising under this subchapter are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The period during which a complaint is being handled administratively shall not toll the running of any limitations period in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

(e) An initial decision pending an appeal before the Chief Procurement Officer, or his or her designee, or a final determination by the Chief Procurement Officer, or his or her designee, shall not prevent NJ TRANSIT from exercising any other right or seeking any other remedy available at law or in equity.

16:72-6.6 Rejection of goods and/or services

Nothing in this subchapter shall preclude NJ TRANSIT from rejecting the goods or services in question if, upon delivery, defects

are substantial and not curable by the contractor within a reasonable time.

16:72-6.7 Emergency situations

When, in the discretion of the Chief Procurement Officer, or his or her designee, the non-compliance by the contractor affects or may affect health, safety, or jeopardize the assets of NJ TRANSIT, the Chief Procurement Officer, or his or her designee, shall immediately contact the contractor and attempt to obtain full compliance. If no resolution is immediately forthcoming, the Chief Procurement Officer may, without delay, engage a substitute contractor and charge the non-complying contractor any additional costs NJ TRANSIT incurs as a result of the substitution.

16:72-6.8 Effect of contractor non-compliance with contract provisions

(a) The Chief Procurement Officer may, in the following circumstances, terminate a contract with a non-complying contractor and immediately purchase goods or obtain services from another source and charge the defaulting contractor the difference in price, if any:

1. Refusal of a non-complying contractor to bring goods or services into compliance in the time or manner specified by the Chief Procurement Officer; or

2. Refusal of a contractor to answer inquiries by NJ TRANSIT or failure of a contractor to respond to a formal complaint within 10 business days of receipt or prior to the deadline specified in the notice of complaint.

(b) The Chief Procurement Officer may, upon continued or willful failure to perform, suspend or debar the contractor subject to the debarment, suspension, and disqualification procedures set forth in N.J.A.C. 16:72-5.

16:72-6.9 Complaint discovery procedures

(a) NJ TRANSIT, either as part of discovery in connection with a complaint filed under this subchapter, or for any other reason, is entitled to request, receive, review, and audit copies of any and all records and documents related to a NJ TRANSIT contract at any time. Upon receipt of the request, the contractor shall promptly provide the requested records and documents free of charge in the time, place, and manner specified. Failure of the contractor to comply with the requirements of this section may, at the reasonable discretion of the Chief Procurement Officer:

1. Constitute sufficient basis to resolve the issue(s) in the complaint against the non-compliant contractor; and/or

2. Be used by NJ TRANSIT to prove contract non-compliance and may be the basis for NJ TRANSIT to take any action or seek any remedy available under the contract, at law, or in equity.

16:72-6.10 Complaint against disadvantaged business enterprise

Complaints filed against a disadvantaged business enterprise in a Federally funded procurement shall follow an alternate procedure consistent with 49 CFR Part 26.

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NEW JERSEY TRANSIT CORPORATION

New Jersey Transit Procurement Policies and Procedures

Notice of Adoption: N.J.A.C. 16:72

Notice of Adoption of New Rules: N.J.A.C. 16:72-1.11, 4, 5.1, and 6

Proposed: January 7, 2019 at 51 N.J.R. 1(1)

Adopted: ____, 2019, by New Jersey Transit Corporation, Kevin S. Corbett, Executive Director.

Filed: ____, 2019 as R. 2019 ____, with changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 2A:44-143, 27:25-5.e, 27:25-6, and 27:25-11.

Effective Date:

Expiration Date:

Summary of Public Comments and Agency Responses:

The comment period officially ended on March 8, 2019. The New Jersey Transit Corporation received comments from Robert A. Briant, Jr., CEO of The Utility and Transportation Contractors Association of New Jersey (UTCA). The comments are summarized below along with the responses.

COMMENT: The UTCA expressed concern over the removal of a 20-calendar day notice period prior to the receipt of bids after advertisement under section 16:72-2.1.

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RESPONSE: The New Jersey Transit Corporation recognizes UTCA's concerns regarding the removal of the notice period and restored the 20 calendar day notice period but also allowed for the Chief Procurement Officer to modify the time period in order to provide public transportation and transit operations without disruption. While the 20 calendar day period is acceptable for larger procurements, smaller or priority procurements would be hindered by a 20 day period of time. Allowing the Chief Procurement Officer to modify the time period, on a case-by-case basis, by considering, among other factors, the type of good or service to be procured would enhance NJ TRANSIT's ability to provide public transportation and transit operations without disruption.

COMMENT: The UTCA suggested adding a five calendar day period prior to the bid submissions date for an amendment to be issued under section 16:72-2.5(a)2.

RESPONSE: The New Jersey Transit Corporation recognizes UTCA's concern regarding the time period between the amendment of Invitation for Bids and the scheduled bid opening and has implemented a five calendar day period.

Summary of Changes Upon Adoption

Citation added under section 16:72-1.5(b) to reference the New Jersey Transit Reform Bill P.L. 2018 c. 169.

Citation added under section 16:72-1.5(i) to reference the New Jersey Transit Reform Bill P.L. 2018 c. 169.

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Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

A federal standards analysis is not required because the requirements of this rulemaking are governed by N.J.S.A. 27:25-11 and are not subject to any federal procurement regulations or standards. To the extent that a complaint is filed against a Disadvantaged Business Enterprise in a federally funded procurement, an alternate procedure consistent with the federal regulations is required.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

16:72-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

“Bidder” or “proposer” means any person, firm, corporation, or other entity that provides, or offers or proposes to provide, goods or services to, or performs, any contract for NJ TRANSIT.

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“Chief Procurement Officer” means the person responsible for the management and administration of the procurement, purchasing, materials management, and central intake for NJ TRANSIT.

...

“Design-build (DB)” means a design-build project in which one single entity performs the design and construction for the project. The design-build firm may be a single firm, a joint venture, a general contractor, or a joint venture and an architect/engineer team.

“Design-build-finance-operate and maintain (DBFOM)” means a design-build project in which one single entity provides the financing, or a part thereof, for the project and performs the design and construction of a project, operates the project, and maintains the project for a specified period of time, all under one contract. The DBFOM may be a single firm, a joint venture, or a general contractor, or a joint venture and an architect/engineer team.

“Design-build project” means:

1. A project under which NJ TRANSIT enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system or an operable segment of such system; and

2. May include an option to finance, or operate and maintain for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

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In addition, “design-build project” also means a construction project under which NJ TRANSIT enters into a contract with a firm, or consortium of firms, both to design and construct a public transportation facility that is the subject of the project.

“Design-build-operate and maintain (DBOM)” means a design-build project in which one single entity performs the design and construction of a project, operates the project, and maintains the project for a specified period of time all under one contract. The DBOM may be a single firm, a joint venture, a general contractor, or a joint venture and an architect/engineer team.

...

"Line item" means a procurement item specified in the solicitation for which the bidder is asked to give individual pricing information.

...

"Procurement" means the awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, goods, or for rendering any services to NJ TRANSIT. “Procurement” shall include contracts that are awarded after advertisement, or other competitive process, as well as contracts that are awarded pursuant to N.J.A.C. 16:72-1.5(e) (procurement-by-exception).

“Procurement-by-exception” means a form of procurement in which the subject matter is excepted from the requirement of public advertisement.

“Publicly available,” with respect to any procurement, either in printed or electronic format, means access to the record of any particular procurement or contract for review and/or copying, with the exception of any materials deemed by NJ TRANSIT to be

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proprietary, confidential, or subject to any privilege, or exclusion under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the common law, and/or U.S. copyright law.

...

16:72-1.4 Responsible contractors

(a) Procurements shall be made from, and contracts shall be awarded to, responsible contractors only. A responsible contractor is one who meets the following standards:

1. Has adequate financial resources, or the presently demonstrable ability to obtain such resources, as required during the performance of the contract;

2.-3. (No change.)

4. Has a satisfactory record of integrity;

5.-7. (No change.)

(b) (No change.)

(c) A prospective contractor may be deemed not responsible with respect to a specific matter for which bids are solicited when NJ TRANSIT has previously held it in default on a contract for that matter. In order to determine if a prospective contractor should be determined to be not responsible based on a previous contract default, the circumstances surrounding the default will be considered.

(d) (No change.)

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(e) Disclosure shall be made by all prospective contractors consistent with, and pursuant to, N.J.S.A. 52:25-24.2 of names and addresses of all owners, members, stockholders, and/or partners holding 10 percent or more interest in the firm.

16:72-1.5 Methods of procurement

(a) Invitation for Bid: Except as provided in (c) and (d) below, the formal advertising procedures contained in N.J.A.C. 16:72-2 shall be followed for all purchases or contracts in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7) in which an award is made on the basis of cost, no negotiations are necessary with the bidders, and a firm-fixed priced contract is appropriate.

(b) Quotation: Purchases or contracts not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7) or Section 13 of P.L. 2018 c. 162 (N.J.S.A. 27:25-11) shall be made in accordance with the process published by the New Jersey Department of the Treasury, Circular No. 16-02-DPP, as amended and supplemented.

(c) Request for proposals: The procurement of goods and services in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7), which will not be evaluated based solely on cost, shall be accomplished through the issuance of an advertised request for proposal or, for professional and technical services, to a minimum of three vendors, or where determined by the Executive Director, or his or her designee, in writing, that an alternative method of procurement is in NJ TRANSIT's best interest.

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(d) An alternate method of advertised procurement may be used when the Executive Director, or his or her designee, determines in writing, that the alternative method is in NJ TRANSIT's best interest.

(e) Procurement-by-exception: The requirements of (a), (b), and (c) above may be waived under the following circumstances and the purchase or contract made in such manner as the Executive Director, or his or her designee, may determine is in the best interest of NJ TRANSIT:

1.-12. (No change.)

13. The procurement of services to be performed by the contractor personally under the supervision of the Executive Director, or his or her designee, and paid for on a timely basis;

14. To acquire or overhaul motorbuses, light rail vehicles, rail cars, locomotives, signal systems, or fare collection systems; and

15. To acquire goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by Federal funds awarded by the U.S. Department of Homeland Security or other Federal agency, from vendors that:

i. Are holders of a current State contract for the equipment, goods, or services sought;

ii. Are participating in a Federal procurement program established by a Federal department or agency; or

iii. Have been approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force.

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(f) For any procurement, for which negotiation is authorized, the Executive Director, or his or her designee, may negotiate with bidders or proposers, the final terms and conditions of any contract, including price. Such ability to so negotiate shall be expressly set forth in the applicable request for proposal, or other solicitation, and submitted proposals or bids shall not be publicly accessible until after negotiations have been completed and the notice of intent to award the contract has been issued.

(g) Authority for procurement-by-exception: The authority for procurement under the circumstances listed in (e) above rests with the Executive Director, or his or her designee, for procurement transactions not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7). Transactions in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c. 48 (N.J.S.A. 52:34-7) will require approval as may be set forth in the By-Laws of NJ TRANSIT.

(h) NJ TRANSIT may purchase through, or from, a Federal supply schedule or through other Federal procurement programs, including, but not limited to, online ordering systems, or through, or from, vendors who hold contracts with other states, or multistate authorities, or other governmental entities to operate:

1. Rail passenger service or portions or functions thereof; or
2. Motorbus regular route, paratransit, or motorbus charter services or portions or functions thereof.

(i) NJ TRANSIT may participate in cooperative purchasing to support its operations or capital program by purchasing from a contract that was publicly competed by a public or non-profit entity and pursuant to Section 13 of P.L. 2018 c. 162 (N.J.S.A. 27:25-11).

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(j) (No change in text.)

16:72-1.7 Execution of contracts

Any contract or instrument shall be deemed properly executed when signed by the Executive Director, or his or her designee. No contract or purchase order shall be entered into unless all applicable requirements of law, this chapter, and NJ TRANSIT's By-Laws have been met, and the approval of the Board of NJ TRANSIT obtained, when required.

16:72-1.8 Specifications

Plans, drawings, or specifications shall permit full and free competition describing the work to be performed. Specifications, plans, and drawings [without reference to brand names or items manufactured by a single company] shall be used to the maximum extent possible.

16:72-1.9 Purchase descriptions

(a)-(b) (No change.)

(c) Where a "brand name or equal" purchase description is used, prospective [contractors] bidders must be given the opportunity to offer products other than those specifically referenced by brand name, if such other products will meet the needs of NJ TRANSIT in essentially the same manner as those referenced.

16:72-1.10 Out-of-State vendors

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All out-of-State vendors that wish to do business with NJ TRANSIT shall be afforded 10 working days to register with the State of New Jersey, after notification by NJ TRANSIT of the intent to award that out-of-State firm a contract. Failure to provide either certification or notification of filing with the Division of Revenue and Enterprise Services within the 10 working-day period may constitute cause for rejection of that firm's bid or proposal.

16:72-1.11 Public information

(a) After a contract is executed, all information submitted in response to a solicitation of proposals or bids is considered public information, notwithstanding any disclaimers to the contrary submitted by a proposer or bidder, except when a request for proposals (RFP) contains a negotiation component or as may be exempted from public disclosure by the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and/or the common law. As a part of its proposal, each proposer or bidder may identify any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. Assertions that the entire bid or proposal, and/or prices contained therein, are exempt from public disclosure under OPRA, the common law, or the U.S. Copyright Act are overbroad and will not be honored by NJ TRANSIT. In the event that a public request is made for materials that the proposer or bidder has identified as confidential, NJ TRANSIT shall have the final authority to determine whether the materials are exempt from public disclosure under OPRA and shall take action as required by applicable law. The proposer or bidder may elect to defend its assertion of

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exemption from the public disclosure requirements of OPRA or the common law, but in doing so, all costs and expenses associated therewith shall be the responsibility of the bidder or contractor. NJ TRANSIT assumes no such responsibility or liability.

(b) When a solicitation permits negotiation with proposers or bidders after the submission of proposals or bids, the proposals or bids shall be made publicly available only after a contract is executed.

SUBCHAPTER 2. PROCEDURES FOR INVITATION FOR BID (IFB)

16:72-2.1 Advertising of bids

The advertisement for bids shall be placed in such newspaper or newspapers selected by NJ TRANSIT that will give best notice thereof to bidders and will be posted on NJ TRANSIT's website. Advertisements shall be made a minimum of 20 calendar days in advance of bid opening; however, a lesser time period may be set by the Chief Procurement Officer in order to provide public transportation and transit operations without disruption. The advertisement shall designate the time and place, when and where sealed bids shall be received and publicly opened and read, or whether bids shall be received electronically, and such other terms as NJ TRANSIT may deem proper.

16:72-2.2 Bid bonds

A bid bond or a deposit consisting of a cashier's check, certified check, or irrevocable letter of credit drawn to the order of NJ TRANSIT in an amount to be determined by NJ TRANSIT, but not exceeding 10 percent of the bid, shall accompany

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all bids to serve as a guarantee that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within 10 working days after issuance of a notice of intent to award. Any bonds submitted pursuant to this section must be executed by surety companies licensed to do business in the State of New Jersey and licensed by the New Jersey Department of Banking and Insurance, in compliance with the New Jersey Producer Licensing Act of 2001, P.L. 2001, c. 210, as amended, and authorized by the U.S. Department of the Treasury, pursuant to Circular 570 as of the date of receipt of bids. Any letters of credit shall be issued by Federally insured financial institutions.

16:72-2.3 Performance and payment bonds

(a) In accordance with N.J.S.A. 2A:44-143, a performance bond not to exceed 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to secure fulfillment of the contractor's obligations specified in the contract. The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to the State by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement consistent with N.J.S.A. 2A:44-143. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:

1.-3. (No change.)

(b) (No change.)

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(c) In accordance with N.J.S.A. 2A:44-143, a payment bond not to exceed 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to protect firms or persons supplying labor or materials to the contractor/subcontractor for the performance of work provided for in the contract. The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to NJ TRANSIT by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement consistent with N.J.S.A. 2A:44-143. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:

1.-3. (No change.)

(d) (No change.)

(e) Performance and payment bonds must be executed by surety companies licensed to do business in the State of New Jersey and licensed by the New Jersey Department of Banking and Insurance, in compliance with the New Jersey Producer Licensing Act of 2001, P.L. 2001, c. 210, as amended, and authorized by the U.S. Department of the Treasury pursuant to Circular 570.

16:72-2.5 Amendment of Invitation for Bids

(a) If, after issuance of an Invitation for Bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules,

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opening dates, etc., or to correct a defective or ambiguous Invitation for Bid, such changes shall be accomplished by issuance of an amendment to the Invitation for Bids.

1. The amendment shall be sent to everyone to whom Invitations for Bids have been furnished or made available online.

2. The amendment shall be issued five calendar days before the scheduled bid opening. If necessary the bid opening will be rescheduled at the discretion of the Contracting Officer.

(b) Any information given to a prospective bidder concerning an Invitation for Bids shall be furnished promptly as an amendment to the Invitation for Bids to all other prospective bidders or made available online.

16:72-2.6 Cancellation of Invitations for Bids before opening

(a) Invitations for Bids should not be cancelled, unless cancellation is in NJ TRANSIT's best interest.

(b) Where an Invitation for Bid is cancelled, bids that have been received shall be returned, unopened, to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom Invitations for Bids were issued or made available online.

16:72-2.7 Time of bid submission

Bids shall be submitted, so as to be received as designated in the Invitation for Bids not later than the exact time set for opening of bids.

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16:72-2.8 Receipt and safeguarding of bids

(a) All bids received prior to the time of opening shall be kept secure, and, except as provided in (b) below, unopened. If an Invitation for Bids is cancelled, or if a bidder effectively withdraws a bid prior to the time set for opening of bids, all bids, or the withdrawn bid, as the case may be, shall be returned to the bidders.

(b) (No change.)

16:72-2.12 Cancellation of bids after opening

(a) Invitations for Bids may be cancelled after opening but prior to award and all bids rejected, where NJ TRANSIT determines that:

1.-6. (No change.)

7. For other reasons, cancellation is in the best interest of NJ TRANSIT.

(b) (No change.)

16:72-2.14 By-pass of low bidders

If the low bidder is by-passed, a memorandum stating the justification shall be prepared for the file and a letter explaining the decision shall be forwarded to the low bidder.

16:72-2.15 Mathematical calculations

(a) After the bids are opened [and read], they shall be compared on the basis of the correctly determined summation of the correctly determined products of all the quantities

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for contract line items shown in the bid multiplied by the unit prices bid. The results of such comparisons shall be made available to the public. Award shall be made on the basis of the correct total contract price.

(b) (No change.)

16:72-2.16 Initialing of price changes

Price changes in bids shall be initialed or signed electronically by the vendor in the bid submitted to NJ TRANSIT.

16:72-2.17 Waiver of minor informalities or irregularities in bids

NJ TRANSIT reserves the right to waive any minor informalities or irregularities in a bid not in compliance with the specifications, terms, and conditions of the Invitation for Bids.

16:72-2.18 Tie bids

(a) In the event that the correct total contract prices submitted by two or more vendors are identical, NJ TRANSIT shall award the contract based on a relative comparison of the following factors:

1. Delivery advantage, considering time, distance, convenience, and facilities of vendor; and

2. (No change.)

(b) When none of the distinguishable characteristics in (a) above are available, NJ TRANSIT shall, if practicable, provide for contract award by splitting the award. If splitting

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the award is not practicable, the award will be made according to the tie-breaking criteria in the solicitation document.

16:72-2.19 Bid errors

(a) While bidders normally shall be expected to be bound by their bids, circumstances exist where correction or withdrawal of bids is permitted.

1. A bidder shall not be permitted to correct a bid mistake after bid opening that would cause the bidder to have the low bid, unless the mistake is clearly evident from examining the bid document, for example, clerical errors in extensions.

[3.] 2. (No change in text.)

3. (No change in text.)

16:72-2.20 Award

(a) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid or extension thereof, to the lowest responsible bidder for contracts for the construction or improvement of capital facilities. This provision shall not apply to any design-build project, including design, build or design, build, maintain and operate, or design, build, maintain, operate, and finance projects, or affect NJ TRANSIT's Disadvantaged Business Enterprise or Small Business Enterprise programs or limit NJ TRANSIT's right to extend, add, or resume work on any project.

(b) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid, or extension thereof, to that responsible bidder whose

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bid, conforming to the Invitation for Bids, will be most advantageous to NJ TRANSIT, price and other factors considered, for contracts other than contracts for the construction or improvement of capital facilities to which (a) above applies.

(c) (No change.)

SUBCHAPTER 3. REQUESTS FOR PROPOSALS (RFPs)

16:72-3.1 Solicitation of proposals

Proposals for goods and services shall be solicited in a manner that maximizes the opportunity for competition, unless otherwise provided in N.J.A.C. 16:72-1.5(c).

16:72-3.3 Amendment of request for proposals

(a) If after issuance of a request for proposals (RFP), but before the time of receipt, it becomes necessary to make changes in scope, delivery deadline, closing dates, or any other part of the RFP, or to correct a defective or ambiguous RFP, such changes shall be accomplished by issuance of an amendment of the RFP. The amendment shall be made available online or sent to everyone to whom NJ TRANSIT has furnished the RFP.

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP or made available online or sent to everyone to whom NJ TRANSIT has furnished the RFP.

16:72-3.4 Cancellation of requests before opening

Requests for proposals (RFPs) should not be cancelled, unless cancellation is in NJ TRANSIT's best interest. Where an RFP is cancelled, proposals that have been received

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shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were furnished by NJ TRANSIT or be made available online. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:72-3.10 Rejection of individual proposals

(a) Any proposal that fails to meet a mandatory material requirement of the RFP shall be deemed non-responsive.

(b) Any proposal received from a firm determined to be not responsible shall be removed from consideration for award.

16:72-3.12 Award

Unless all proposals are rejected, award shall be made to that responsible proposer whose proposal, conforming to the request for proposals, is the most advantageous to the State, price and other factors considered, and/or provides the best value pursuant to the governing law applicable to the RFP.

SUBCHAPTER 4. DESIGN-BUILD PROJECTS

16:72-4.1 Solicitation of design-build projects

(a) The solicitation of design-build projects may be by the issuance of an Invitation for Bid or a request for proposal, depending on the requirements of the specific project.

(b) As part of the solicitation for design-build projects, NJ TRANSIT may prescribe:

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1. In the solicitation documents, essential project requirements in performance terms;

2. Criteria by which proposals will be evaluated by NJ TRANSIT;

3. The process that leads to contract award for design and construction services and, where applicable, maintenance and operation and finance of a project based on a firm schedule required by NJ TRANSIT; and

4. That members of a design-build team presented by the firm selected for award may be modified or substituted after the evaluation procedure is completed, but new or substituted members must be submitted to NJ TRANSIT prior to the execution of the contract, with supporting information as required by NJ TRANSIT. A prospective contractor will not be permitted to execute the contract with NJ TRANSIT until NJ TRANSIT deems the new or substituted member qualified. No modifications or substitutions to the design-build team will be permitted beyond execution of the contract for work and completion of design, except for exigent circumstances beyond the control of the contractor within the discretion of NJ TRANSIT.

(c) NJ TRANSIT may, within its discretion, depending upon the complexity and size of the project, prescribe payment of a lump sum stipend to those bidders/proposers, with satisfactory qualifications and a demonstrated technically satisfactory approach deemed to be within the competitive range of a two-step procurement process in order to:

1. Encourage quality teams to participate;

2. Provide some modicum of financial relief to offset costs of developing a preliminary design;

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3. Motivate firms to achieve innovations and adequately develop designs and a competitive bid price;

4. Any bidder/proposer that accepts a stipend shall transfer all ownership and rights in the bidder's/proposer's design to NJ TRANSIT for use in this project. No stipend shall be paid to the firm that is awarded and executes a contract for the project. In order for a bidder/proposer to receive payment of a stipend, the bidder/proposer must have submitted a responsive and responsible complete proposal, including price. The NJ TRANSIT Board of Directors may prescribe limits as to the amount of the stipend to be paid to each bidder/proposer qualified to participate in the second stage, depending upon the size and complexity of the project and may limit the number of stipends to be paid per design-build contract.

(d) Notwithstanding the two-step solicitation process, NJ TRANSIT may also utilize a special prequalification process before the first step begins.

16:72-4.2 Evaluation for design-build projects

(a) NJ TRANSIT may solicit bids/proposals for design-build projects and set forth the selection criteria in the solicitation documents, which may include either a one-step or two-step evaluation process depending on the size and complexity of the project.

(b) A one-step process for procuring a particular design-build project will solicit separate qualification and pricing packages and can be awarded, as described in the solicitation, based on either:

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1. An award to the lowest priced proposal from a firm meeting the technical qualification requirements of the solicitation; or

2. An award to that firm whose proposal represents the best value, as determined based on a pre-determined combination of technical merit and price elements, which may include price, schedule, and technical approach.

(c) A two-step evaluation process may be stated in the solicitation documents for a particular design-build project that separates the review of the technical proposal from the price as follows:

1. During the first step, the bidders'/proposers' technical qualifications and overall technical approach to the project will be evaluated to determine those firms that fall within the competitive range of satisfactory qualifications and a demonstrated technically satisfactory approach. Those firms in the competitive range will be invited to proceed to the next step; and

2. During the second step, complete technical proposals and price proposals for the project will be solicited and evaluated.

SUBCHAPTER 5. DEBARMENT, SUSPENSION, AND DISQUALIFICATION OF PERSONS

16:72-5.1 Purpose and scope

The purpose of this subchapter is to set forth the procedures that apply to debarment, suspension, and disqualification of a person or persons from public contracting with NJ TRANSIT. Hearings arising as a result of this subchapter are

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contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:72-5.2 Causes for debarment of a person(s)

(a) In the public interest, NJ TRANSIT shall debar a person for any of the following causes:

1.-3. (No change.)

4. Violations of any of the laws governing the conduct of elections of the Federal government, the State of New Jersey, or of its political subdivisions;

5. Violation of the Law Against Discrimination, P.L. 1945, c. 169, as amended (N.J.S.A. 10:5-1 et seq.), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, c. 114, N.J.S.A. 10:1-10 et seq.);

6.-14. (No change.)

15. Failure by a vendor to report to the Attorney General and to the State Ethics Commission in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to report in writing forthwith or failure to obtain a waiver from the State Ethics Commission, who may undertake, directly or indirectly, of any

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private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract, or other agreement, express or implied, or sale, directly or indirectly of any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by, or to, any State agency or any instrumentality thereof, or with any person, firm, or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13.g. Any relationship subject to this paragraph shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

17. Influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee; or

18. Cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

(b) The provisions set forth in (a)14 through 18 above shall be referenced in all Invitations for Bids and RFPs issued by or on behalf of NJ TRANSIT.

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16:72-5.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Executive Director, or his or her designee, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 16:72-5.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Executive Director, unless otherwise required by law, and shall be rendered in the best interest of NJ TRANSIT.

3. (No change.)

4. The existence of a cause set forth in N.J.A.C. 16:72-5.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 16:72-5.2(a)9 through 18 shall be established by evidence that NJ TRANSIT determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 16:72-5.2(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 16:72-5.2(a)1 through 18 was the basis for debarment by the original debarring agency. Such debarment may be based

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entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

16:72-5.4 Procedures, period of debarment, and scope

(a) The procedures, the period of debarment, and the scope of debarment to be followed by NJ TRANSIT are explained below:

1. NJ TRANSIT, when seeking to debar a person or his or her affiliates, shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment, and indicating that such party will be afforded an opportunity for a hearing if the person requests one within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where another department or agency has imposed debarment upon a party, NJ TRANSIT may also impose a similar debarment without affording an opportunity for a hearing, provided that NJ TRANSIT furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

2.-3. (No change.)

4. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such

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conduct was accomplished within the course of his or her official duty or was affected by him or her with the knowledge or approval of such person.

16:72-5.5 Causes for suspension of a person(s)

In the public interest, NJ TRANSIT shall suspend a person for any cause specified in N.J.A.C. 16:72-5.2 or upon adequate evidence that such cause exists.

16:72-5.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. (No change.)

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Executive Director and of the Attorney General, and shall be rendered in the best interest of NJ TRANSIT.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists.

4. (No change.)

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 16:72-5.2(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

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6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 16:72-5.2 may be the basis for the imposition of a concurrent suspension by NJ TRANSIT, which may impose such suspension without the approval of the Attorney General.

16:72-5.7 Procedures, period of suspension, and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension, and scope of suspension shall be adhered to by NJ TRANSIT.

1. NJ TRANSIT may suspend a person or his or her affiliates, provided that within 10 days after the effective date of the suspension, NJ TRANSIT provides such party with a written notice stating that a suspension has been imposed and its effective date; setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed; stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for an informal hearing if the person requests, or a statement declining to give such reasons and setting forth NJ TRANSIT's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by NJ TRANSIT, the latter shall note that fact as a reason for its suspension.

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2. (No change.)

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of such person.

16:72-5.8 Disqualification of a person(s)

The disqualification of a person shall conform to N.J.S.A. 27:25-1 et seq., and this chapter.

16:72-5.9 Extent of debarment, suspension, or disqualification

The exclusion from NJ TRANSIT contracting by virtue of debarment, suspension, or disqualification shall extend to all contracting and subcontracting within the control or jurisdiction of NJ TRANSIT, including any contracts that utilize State funds. When it is determined by the Executive Director to be essential to the public interest, an exception from total exclusion may be made with respect to a particular NJ TRANSIT contract. A copy of said exception shall be filed with the Attorney General.

Recodify existing N.J.A.C. 16:72-4.9, 4.10, and 4.11 as 5.10, 5.11, and 5.12 (No change in text.)

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SUBCHAPTER 6. COMPLAINTS

16:72-6.1 Purpose and scope

The purpose of this subchapter is to set forth the procedure for NJ TRANSIT contract users to file complaints related to contracts arising as a result of procurements conducted under the provisions of N.J.S.A. 27:25-11 et seq. If this complaint process is not used, NJ TRANSIT does not waive any of its rights or remedies available at law or in equity.

16:72-6.2 Applicability

The provisions of this subchapter deal specifically with means of assuring prompt action in cases where an NJ TRANSIT employee, by filing a formal complaint, claims that an NJ TRANSIT contractor's performance fails to meet contract requirements, and by establishing a record that documents a contractor's poor performance in cases where a contractor's performance fails to meet contract requirements. NJ TRANSIT may refrain from doing business with any contractor for repeated or excessive breaches of NJ TRANSIT contract terms, including, as necessary, to protect NJ TRANSIT's best interests. NJ TRANSIT may also use a record of contractor poor performance to bypass that contractor as low bidder on an Invitation for Bid or as an evaluation factor in a request for proposal solicitation.

16:72-6.3 Filing of complaints; subject matter

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(a) A complaint shall be in writing. Complaints are not required where a contract contains specific performance standards including, but not limited to, liquidated damages. Alleged breaches of contract provisions that may be reported include, but are not limited to:

1. Failure by the contractor to deliver goods or services at the time and place or in the manner, quantity, or quality specified;
2. Demand for prices other than those specified in the contract;
3. Delivery of unauthorized substitutes or ungraded material where grading is required;
4. Sale of goods that are not authorized by the contract;
5. Failure to install goods or improper installation;
6. Any other failure to comply with contract specifications or failure to achieve a satisfactory rating for the service provided under the contract if quality assurance surveys are performed;
7. A conflict of interest; and
8. Failure to comply with any relevant legal or contractual requirement.

16:72-6.4 Time frames

As soon as possible after receipt of the complaint, the Chief Procurement Officer, or his or her designee, will provide written notice to the contractor against which the complaint was filed. Once notified, the contractor must reply to the complaint within 10 business days of the contractor's receipt thereof, or prior to the deadline specified in the notice of complaint, whichever date is earlier. The contractor may cure or submit a

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corrective action plan for any defects during that period. A cure or corrective action plan may be taken into consideration by the Chief Procurement Officer's designee in determining whether a complaint is to be resolved against the contractor. The contractor shall notify the assigned designee of any cure or corrective action plan effectuated by the contractor. However, such a cure or corrective action plan shall not serve as cause for automatic invalidation of a meritorious complaint. The using department may file a response to the submission of the contractor and provide a copy of the using department's response to the contractor. As soon as practicable after receipt of the response provided, the Chief Procurement Officer's designee shall issue an initial determination to the contractor and using department regarding the merits of the complaint. The contractor or using department may file an appeal to the Chief Procurement Officer within 10 business days of receipt of NJ TRANSIT's initial determination or, prior to the deadline specified in the initial determination, whichever date is earlier. If the Chief Procurement Officer finds that a complaint against a contractor is valid, the contractor shall be notified of the time by which corrections are to be made. Any time frame specified in this subchapter may be shortened or extended by the Chief Procurement Officer for good cause. In such instances, the Chief Procurement Officer shall give adequate notice to the parties involved. A pending complaint or an initial determination shall not prevent NJ TRANSIT from exercising any other right or seeking any remedy available at law or in equity.

16:72-6.5 Resolution of complaints

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(a) A complaint appealed to the Chief Procurement Officer, or his or her designee, shall be resolved by written decision on the basis of the Chief Procurement Officer's review of the written record including, but not limited to, the complaint and any attachments, the terms, conditions, and requirements of the contract that includes the proposal submitted by the contractor, pertinent administrative rules, statutes, and case law, and any associated documentation the Chief Procurement Officer deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

(b) At the discretion of the Chief Procurement Officer, the using department and/or respondent may be required to make an in-person presentation, which may include an opportunity to submit additional documentation relevant to the issues set forth in the original complaint.

(c) The Chief Procurement Officer, or his or her designee, may perform a review of the written record or conduct an in-person presentation directly. A determination by the Chief Procurement Officer, or his or her designee, shall be a final agency decision, which shall be appealable to the Appellate Division of the Superior Court.

(d) Hearings arising under this subchapter are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The period during which a complaint is being handled administratively shall not toll the running of any limitations period in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

(e) An initial decision pending an appeal before the Chief Procurement Officer, or his or her designee, or a final determination by the Chief Procurement Officer, or his or

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her designee, shall not prevent NJ TRANSIT from exercising any other right or seeking any other remedy available at law or in equity.

16:72-6.6 Rejection of goods and/or services

Nothing in this subchapter shall preclude NJ TRANSIT from rejecting the goods or services in question if, upon delivery, defects are substantial and not curable by the contractor within a reasonable time.

16:72-6.7 Emergency situations

When, in the discretion of the Chief Procurement Officer, or his or her designee, the non-compliance by the contractor affects or may affect health, safety, or jeopardize the assets of NJ TRANSIT, the Chief Procurement Officer, or his or her designee, shall immediately contact the contractor and attempt to obtain full compliance. If no resolution is immediately forthcoming, the Chief Procurement Officer may, without delay, engage a substitute contractor and charge the non-complying contractor any additional costs NJ TRANSIT incurs as a result of the substitution.

16:72-6.8 Effect of contractor non-compliance with contract provisions

(a) The Chief Procurement Officer may, in the following circumstances, terminate a contract with a non-complying contractor and immediately purchase goods or obtain services from another source and charge the defaulting contractor the difference in price, if any:

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1. Refusal of a non-complying contractor to bring goods or services into compliance in the time or manner specified by the Chief Procurement Officer; or

2 Refusal of a contractor to answer inquiries by NJ TRANSIT or failure of a contractor to respond to a formal complaint within 10 business days of receipt or prior to the deadline specified in the notice of complaint.

(b) The Chief Procurement Officer may, upon continued or willful failure to perform, suspend or debar the contractor subject to the debarment, suspension, and disqualification procedures set forth in N.J.A.C. 16:72-5.

16:72-6.9 Complaint discovery procedures

(a) NJ TRANSIT, either as part of discovery in connection with a complaint filed under this subchapter, or for any other reason, is entitled to request, receive, review, and audit copies of any and all records and documents related to a NJ TRANSIT contract at any time. Upon receipt of the request, the contractor shall promptly provide the requested records and documents free of charge in the time, place, and manner specified. Failure of the contractor to comply with the requirements of this section may, at the reasonable discretion of the Chief Procurement Officer:

1. Constitute sufficient basis to resolve the issue(s) in the complaint against the non-compliant contractor; and/or

2. Be used by NJ TRANSIT to prove contract non-compliance and may be the basis for NJ TRANSIT to take any action or seek any remedy available under the contract, at law, or in equity.

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16:72-6.10 Complaint against disadvantaged business enterprise

Complaints filed against a disadvantaged business enterprise in a Federally funded procurement shall follow an alternate procedure consistent with 49 CFR Part 26.

ITEM 1905-31: ANNUAL NOTICE OF MEETINGS AND DESIGNATION OF BOARD SECRETARY

WHEREAS, the New Jersey Transit Corporation, NJ TRANSIT Rail Operations, Inc., NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., NJ TRANSIT Morris, Inc. have regular meetings of the Board of Directors; and

WHEREAS, pursuant to the Open Public Meetings Law, P.L. 1975, c.231, an annual notice of regular meetings of the Board of Directors must be disseminated; and

WHEREAS, Public Law 2018, chapter 162 requires the Board to hold a minimum of 10 public Board meetings per year and one-half of the total number of meetings shall be held in the evening; and

WHEREAS, the Annual Notice of Meetings must be prominently posted in one public place reserved for announcements of this type, transmitted to newspapers, filed with the Secretary of State, and transmitted to any person who requests it; and

WHEREAS, Public Law 2018, chapter 162 requires the annual designation of a Board Secretary by the NJ TRANSIT Board of Directors;

NOW, THEREFORE, BE IT RESOLVED that the Annual Notice of Meetings, Exhibit A, for all of the Board of Directors' meetings during Fiscal Year 2020 is adopted; and

BE IT FURTHER RESOLVED that the Annual Notice of Meetings shall be disseminated in accordance with the provisions of the Open Public Meetings Act, P.L. 1975, c.231 and Public Law 2018, chapter 162; and

BE IT FURTHER RESOLVED that Joyce J. Zuczek is designated as Board Secretary of NJ TRANSIT and its subsidiaries.

EXHIBIT A

ANNUAL NOTICE OF MEETINGS: FISCAL YEAR 2020

**NEW JERSEY TRANSIT CORPORATION
NJ TRANSIT RAIL OPERATIONS, INC.
NJ TRANSIT BUS OPERATIONS, INC.
NJ TRANSIT MERCER, INC.
NJ TRANSIT MORRIS, INC.**

In accordance with the "Open Public Meetings Act," P.L. 1975, c.231 and Public Law 2018, chapter 162 the above organizations will hold regular meetings, open to the public, on the second Wednesday of the month for the period July 1, 2019 through June 30, 2020, except as noted below. The Board shall hold a minimum of 10 public board meetings per year. One-half of the total number of meetings of the Board shall be held in the evening.

Unless otherwise indicated, meetings will be held at NJ TRANSIT's Corporate Headquarters in Newark, New Jersey. The meetings will convene in the Board Room at NJ TRANSIT's Headquarters, One Penn Plaza East, Ninth Floor, Newark, New Jersey.

The specific dates and times are as follows:

July 17, 2019 (3 rd Wednesday)	9:00 a.m.
August 2019	NO MEETING
September 12, 2019 (2 nd Thursday)	9:00 a.m.
October 16, 2019 (3 rd Wednesday)	6:00 p.m. Evening
November 13, 2019	6:00 p.m. Evening
December 11, 2019	9:00 a.m.
January 2020	NO MEETING
February 12, 2020	6:00 p.m. Evening
March 11, 2020	6:00 p.m. Evening
April 8, 2020	9:00 a.m.
May 13, 2020	6:00 p.m. Evening
June 10, 2020	9:00 a.m.